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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 255.

ALEXANDER H. ROBERTSON, TRUSTEE OF THE ESTATE OF ELLA V. DAVIS, DECEASED, APPELLANT,

vs.

SAMUEL M. CHAPMAN, MILTON D. POLK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED OCTOBER 14, 1890.

(14,274.)

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1 Pleas before the Honorable Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in the circuit court of the United States for said district of Nebraska, within the eighth judicial circuit, at the term of May, A. D. 1890.

Be it remembered that on the 26th day of January, 1889, amended bill was filed in the office of the clerk of said circuit court; which said amended bill is in words and figures following, to wit:

Amended Bill.

In the Circuit Court of the United States, District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of the Estate of Ella V. Davis, Dec'd, Plaintiff,
vs.
LOMBARD INVESTMENT CO., MILTON D. POLK, SAMUEL M. CHAPMAN, Michael O'Donohoe, Frank Carruth, Samuel Waugh, Velasco V. Leonard, Kate Polk, Anna O'Donohoe, Uriah V. Mathews, H. A. Waterman & Son, & Milton J. Kennard, Defendants.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Your orator in this his amended bill, filed by leave of court, complaining, shows unto your honors that he is a resident of the city of Baltimore, State of Maryland, and a citizen of the State of Maryland; that each and every one of the above-named defendants are residents of the city of Plattsmouth, State of Nebraska, and citizens of the State of Nebraska, with the exception of the Lombard Investment Co. and Milton J. Kennard; that said Lombard Investment Co. is a citizen of the State of Kansas, being incorporated and duly organized under the laws of the State of
2 Kansas, and having a principal office in and doing business at the city of Omaha, State of Nebraska; that Milton J. Kennard is a resident of the city of Omaha, State of Nebraska, and a citizen of the State of Nebraska; that H. A. Waterman & Son are a firm doing business in the city of Plattsmouth, and formed for the purpose of carrying on business in the State of Nebraska; that the amount involved in this controversy, exclusive of interest and costs, exceeds the sum of $2,000.00.

That on the 28th day of February, 1881, Ella V. Davis, a resident of Baltimore, in the State of Maryland, and a citizen of the State of Maryland, died leaving a will and two codicils thereto, by the terms of which Augustine C. Dalrymple, a resident of the city of Baltimore and citizen of the State of Maryland, was appointed trustee, but on the 5th day of May, 1881, duly refused to accept said trust and renounced all right, title, and claim by virtue of said appointment; that thereafter, to wit, on the 3rd day of June, 1881,

William A. Stewart was, by the circuit court of Baltimore, State of Maryland, duly appointed trustee under said will in the place and instead of said Dalrymple, qualified and entered upon the duties of said trust, and that on the 6th day of April, 1885, said Stewart duly resigned as said trustee and renounced all right, title, and claim by virtue of said appointment, and on the same last-mentioned date your orator was, by the circuit court of Baltimore county, State of Maryland, duly appointed his successor, qualified and entered upon the duties of said office; that said Ella V. Davis was at the time of her death the owner of the following-described real estate situate in Cass county, State of Nebraska, to wit: 20 feet off of the west side of lot 12, block 29; the east half of lot 10, block 28; lots 1 to 6, inclusive, block 2; lots 1 to 6, inclusive, block 89 (89), all in the city of Plattsmouth; also lots 7 to 12, inclusive, block 5, and
3 lots 1 to 6, inclusive, block 8, in White's addition to the city of Plattsmouth, a part of which said property, to wit, lots 3 & 4, block 2, Plattsmouth, and lots 7, block 5, White's addition to Plattsmouth, yielding an income of about $35 per month.

That the will of said Ella V. Davis was on the 9th day of March, 1881, duly probated and allowed by the orphans' court of Baltimore county, Maryland, and was afterwards, on the 13th day of May, 1885, duly probated and allowed in the probate court of Cass county, State of Nebraska.

That by the terms of said will full power was given to the trustee thereunder to sell and dispose of, lease, and convey the estate and property of said testatrix or any part thereof as he might think proper.

That by clause 7th of the second codicil to said will the 8th clause of said will, empowering said trustee to sell and dispose of said estate, as above set forth, was revoked and the said trustee empowered to sell only such real estate as yielded no income, in case the same could not be leased to advantage.

That as said succeeding trustee your orator, in pursuance of the powers conferred on him by virtue of his appointment and the terms of said will and codicils, proceeded to sell said real estate in said Cass county, and to that end entered into negotiations with defendants Samual M. Chapman & Milton D. Polk, at that time in partnership in the practice of law in the said city of Plattsmouth under the firm name of Chapman & Polk; that said negotiations ended in the employment by him of said Chapman & Polk to effect the sale of said real estate and to do and perform all things requisite and legal to the accomplishment of said sale, they, said Chapman & Polk, to act in the premises as agents and attorneys for your orator; that your orator was unfamiliar with the value of said real estate and relied implicitly upon the statements and rep-
4 resentations made to him by the said Chapman & Polk and each of them as to the amount for which said real estate should sell; that your orator deemed it safer for him as said trustee to have any sale of said land conducted under the sanction and license of the district court of said Cass county, and to have said 7th clause of said codicil construed and interpreted by said court with

reference to your orator's proposed sale of said real estate, and employed defendants Chapman & Polk to attend to the due probating of said will in said Cass county and by due and regular court proceedings to obtain for him from the district court of said Cass county the interpretation of said clause in said codicil and the license to sell said real estate. Further complaining, your orator shows that said defendants, Chapman & Polk, falsely and fraudulently represented to him that said real estate was at the time of the alleged sale hereinafter set forth worth about the sum of $4,000, whereas it was at the said time worth at least the sum of $9,000; that said defendants, Chapman & Polk, further falsely and fraudulently represented to your orator that they had found a purchaser for said property in the person of one Michael O'Donohoe, defendant above named, and that said O'Donohoe would pay for said property the amount of $4,000—$1,000 in cash and the balance by his notes secured by mortgage on said real estate in the sum of $1,000 each, due in one, two, and three years, and bearing interest at the rate of 7% per annum. Said defendants, Chapman & Polk, further falsely and fraudulently represented to your orator that said proposed purchase by said O'Donohoe would be best for the estate, and that $4,000 was all that the property at that time would bring, and also falsely and fraudulently represented to your orator that they expected to obtain a decree from the district court of Cass county licensing him to make such sale. Your orator, relying upon such representations and supposing that said decree licensing him to make said
5 sale had been obtained, did, on the 17th of December, 1885, execute, as trustee, a deed of all of said above-described real estate to said Michael O'Donohoe, and forwarded the said deed to the said Chapman & Polk for delivery to said O'Donohoe in execution of said pretended sale, which said deed was on the 22nd day of January, 1886, duly recorded in the office of the clerk of Cass county, Nebraska, and, with an additional certificate subsequently obtained, was re-recorded in said office on the 4th day of June, 1886.

Your orator further alleges that each and every representation, as above set forth, made to your orator by said Chapman & Polk were false and made with the intent to fraudulently cheat and deceive your orator; that it was understood and agreed by an- between the said Chapman, Polk, & O'Donohoe that said pretended sale was to be in reality a sale to said Polk; that said O'Donohoe should pay nothing for said property, and that he should at once, upon receipt from your orator and recording by said Chapman & Polk of a deed of said property running to him, O'Donohoe, execute a deed of said property to said Polk, who would assume and pay off th- *the* said mortgage notes, relieving said O'Donohoe of all responsibility for the payment thereof; that in pursuance of said conspiracy and with the intention to defraud your orator, and well knowing that the value of said property was $9,000 and upwards, said O'Donohoe did, on the 20th day of January, 1886, deed to said Polk all of said real estate, which said deed was duly recorded in the office of the county clerk of said Cass county on the 22nd day of January, 1886, the same date on which the deed from your orator to said O'Donohoe

was filed for record; that thereafter, to wit, on or about the 26th day of January, 1886, the said Chapman & Polk rendered to your orator an account of their doings in the premises, which said account is as follows:

Received from O'Donohoe		$1,000
Paid fee		200
Paid taxes		319 50
6 Remitted		449 15
		$968 65

That said account was false in these particulars: Said O'Donohopaid nothing in cash or other valuable consideration for said deed. There were no legal services performed by said Chapman & Polk or either of them in obtaining decree for license to sell said real estate; on the contrary, a petition for said decree was filed by said Chapman & Polk on the 4th day of February, 1886, after said pretended sale and said petition — withdrawn by them and action dismissed and the files in said case taken and kept by said Polk. Taxes were not paid as set forth in said account; on the contrary, the unpaid taxes on said property amounted to about the sum of $—— and were not paid by said Chapman & Polk or either of them until after said Polk had become nominal owner of said real estate; that your orator on or about the 23rd day of August, 1888, for the first time learned of said fraud practiced on him; that of the notes signed by said O'Donohoe and delivered to your orator the first has been paid in full by said Polk. On the second of said notes the sum of $126.85 of principal and interest to the 10th day of March, 1887, has been paid by said Polk, and there is yet due on said notes according to the tenor thereof the sum of $1,873.15, together with interest on $1,000 thereof from the 10th day of December, 1885, and on $873.15 thereof from March 10th, 1887, at the rate of 7 % per annum. Further complaining, your orator says that after the pretended sale to said O'Donohoe said Polk and wife, Kate, on the 21st day of March, 1888, mortgaged to the defendant Frank Carruth lots 7, 8, 9, 10, 11, & 12, in block 5, and lots 1, 2, & 3, in block 8, White's addition to the city of Plattsmouth, which said mortgage was recorded in the office of the county clerk of Cass county on the 17th day of June, 1888, in Book V of Mortgages, at page 320; that on the 15th day of May, 1886, said Polk and wife
7 conveyed by warranty deed to the defendant Wellington W. Drummond lots 1, 2, & 3, block eight, in White's addition, and lots 1, 2, & 3, block 89, in the city of Plattsmouth; that on the 24th day of December, 1886, said Drummond mortgaged said premises to the defendant Peter Ellingson for the sum of $1,172; that on the 24th day of August, 1887, said Polk and wife mortgaged to the defendant Samuel Waugh the west 20 feet of lot 12, block 29, city of Plattsmouth, for the sake of further securing to the said Waugh the payment of notes, aggregating $1,680, made by defendant Milton J. Kennard to the order of said Polk and by

him endorsed to said Waugh; that at the time of said mortgage by said Polk to said Waugh the mortgage given by said O'Donohoe to your orator, as hereinbefore set forth, was of record as a lien against said 20 feet of lot 12, block 29; that on the 21st day of January, 1886, said Polk and wife conveyed by warranty deed to Velasco V. Leonard the east half of lot 10, block 28, in the city of Plattsmouth, and on the 21st day of July of said year said Leonard mortgaged said property to the defendant The Lombard Investment Co. to secure a loan to him of $2,000; that each and every of said conveyances by said O'Donohoe, by said Polk and his grantees *were* of parts of the property heretofore described and included in the deed from your orator to said O'Donohoe and *were* in fraud of the rights of your orator.

That at the time of each and every of said conveyances or encumbrances the grantees or mortgagees knew or should have known that said conveyances and encumbrances were in fraud of your orator's rights and beyond the right, power, and authority of said O'Donohoe & Polk or either of them to make.

That defendants Uriah V. Mathews and H. A. Waterman & Son claim mechanics' liens on a portion of said real estate, said liens being based on work performed for or at the instance of defendant Wellington W. Drummond; that defendant Milton J. Kennard was the maker of the notes defendant Polk secured by mortgage
8 to said Waugh and is perfectly able to pay said notes; that each and every of said defendants claim an interest in a portion of the land as described in this complaint as mortgagors, purchasers, lienholders, or wives, but that each and every of said claims *are* inferior and subordinate to the rights and claim of your orator in the premises. Your orator is ready and willing and now offers to pay into the court such money as he has received through said pretended sale to said O'Donohoe, for the use of such person or persons as by your honors may be found entitled to it, in case said conveyances and said mortgages are by your honors found null and void and ordered cancelled of record.

Your orator therefore prays the aid of the court in the premises that said defendants and each of them may appear and answer this your orator's amended bill, but without oath, answer on oath being expressly waived. Your orator further prays that each and every of the conveyances and encumbrances set forth in this amended bill be declared null and void as in fraud of the rights of your orator; that they and each of them be cancelled and set aside of record and the title in and to all of the property included in said deed from your orator to said O'Donohoe be quieted in your orator, and that in the event of any of the conveyances or encumbrances made by said O'Donohoe and said Polk be found by your honors to be valid as between your orator and such grantees or mortgagees that your orator have a personal judgment against said O'Donohoe and said Polk and said Chapman for the full value of any property by such conveyances or encumbrances conveyed, and for such other and further relief as shall be agreeable to equity and good conscience and to your honors may seem meet, and so may it please

your honors to grant unto your orator the most gracious *right* of subpœna to be issued under the seal of this court, directed to
9 Milton J. Kennard, Uriah V. Mathews, and H. A. Waterman & Son, therein and thereby directing and commanding them on a certain day and under a certain penalty therein to be limited personally to appear before this court, then and there to answer all and singular the premises and to stand and abide and perform such order or decree therein as to the court shall seem meet.

CONGDON, CLARKSON & HUNT AND
BYRON CLARK, *Solicitors for Plaintiff.*

Upon the back of said amended bill appear endorsements in words and figures following, to wit:

No. 257, M. Circuit court U. S. Alexander H. Robertson *vs.* Sam'l M. Chapman *et al.* Amended bill. Filed Jan. 26, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, Byron Clark, sols. for pl'ff.

Thereupon, afterwards, to wit, on the 27 day of February, 1889, answer was filed in said case; which said answer is in words and figures following, to wit:

Circuit Court U. S.

ALEXANDER H. ROBERTSON
vs.
SAMUEL M. CHAPMAN *et al.*

Answer.

Comes now M. O'Donohoe and answers orator's amended petition; denies that he is a codefendant with any other defendant mentioned in the orator's petition except M. D. Polk.

M. O'DONOHOE.

M. O'DONOHOE,
Att'y for Self.

Upon the back of said answer appear endorsements in words and figures following, to wit:

No. 257, M. U. S. circuit court, district of Nebraska. Alexander H. Robertson, trustee, &c., *vs.* Samuel M. Chapman *et al.* Answer of Michael O'Donohoe. Filed Feb. 27, 1889. Elmer D. Frank, clerk.

10 Thereupon, afterwards, to wit, on the 2nd day of March, 1889, separate answer of S. M. Chapman to amended bill was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of the Estate of Ella V. Davis, Deceased, Plaintiff,
vs.
THE LOMBARD INVESTMENT COMPANY, MILTON D. POLK, SAMUEL M. CHAPMAN, *et al.*, Defendants.

Separate Answer of Samuel M. Chapman to Complainant's Amended Bill.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Comes now Samuel M. Chapman, impleaded with Milton D. Polk *et al.*, — now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith that he denies that the firm of Chapman & Polk were employed by complainant to act as his agents in selling the premises described in the said bill of complaint, and denies that said firm were employed by him to effect a sale of said real estate, and denies that he, as a member of said firm, was employed by complainant as his agent for or to effect a sale of said real estate. This defendant admits that said firm was employed and retained by the complainant to see to the due probating of the will of said Ella V. Davis, deceased, in Cass county, State of Nebraska, as his attorneys, and also to take proceedings in the district court of Cass county,
11 Nebraska, to procure a license from said district court to the said complainant to sell said real estate at private sale, in case, as his attorneys in that regard, they deemed it necessary that said license should be had, and alleges that said complainant agreed to pay said firm as his attorneys for their services the sum of two hundred dollars ($200) in and about the probating of said will and in and about such proceedings in said court for procuring a license for the complainant to sell said real estate. This defendant denies that the complainant entered into negotiations with defendants Samuel M. Chapman and Milton D. Polk, who were in partnership in the practice of law in the city of Plattsmouth under the firm name of Chapman & Polk, for the purpose of employing them as his agents for the sale of said premises. This defendant denies that the complainant was unfamiliar with the value of said real estate, and denies that he relied implicitly upon the statements and representations made to him by said Chapman & Polk and each of them as to the amount for which said real estate should sell, but avers the fact to be that the said complainant came to the city of Plattsmouth, in Cass county, in the State of Nebraska, personally examined said real estate, and consulted with a large number of the business men of the said city of Plattsmouth, consisting of bankers,

real-estate agents, merchants, and others doing business in that city, as to the value thereof, and that after such consultation he fixed the price at which he was willing to sell said real estate if a purchaser could be found therefor, and that such price so fixed by him was the sum of four thousand dollars ($4,000) for all of sa-d real estate, and that four thousand dollars ($4,000) was the highest sum named by the persons with whom he consulted concerning the value thereof.

This defendant, separately answering said amended bill, denies that the said firm of Chapman & Polk or he as a member of
12 said firm falsely and fraudulently represented to the complainant that said real estate was worth only the sum of four thousand dollars ($4,000), and denies that it was worth on or about December 17th, 1885, the sum of nine thousand dollars ($9,000) on the market, as complainant has alleged, but avers the fact to be that at that date said premises were not worth the sum of nine thousand dollars ($9,000), and that they would not have sold to any any other person or persons at that date for any greater sum than four thousand dollars ($4,000).

This defendant, further separately answering said amended bill, denies that said Chapman & Polk further falsely and fraudulently represented to complainant that they had found a purchaser for said property in the person of one Michael O'Donohoe, a defendant herein, and that said O'Donohoe would pay for said property the sum of four thousand dollars ($4,000), one thousand in cash and the balance by his notes secured by mortgage on said real estate in the sum of one thousand — each, due in one, two, and three years, bearing interest at the rate of seven per centum per annum, but alleges the fact to be that they simply reported to the complainant, after having received propositions from the said O'Donoho- for the purchase of said real estate at the price fixed thereon by the complainant, that the said O'Donohoe had made such propositions to purchase said property, and that he so desired to purchase the same for the sum of four thousand dollars ($4,000), and that he proposed to pay one thousand dollars in cash on said property and to secure the balance by his three notes of one thousand dollars ($1,000) each, due in one, two, and three years, bearing interest at the rate of seven per centum per annum, secured by mortage on said real estate.

This defendant, further separately answering said complainant's said amended bill of complaint, denies that said firm of
13 Chapman & Polk further falsely and fraudulently represented to the complainant that said proposed purchase by said O'Donohoe would be the best for the estate, and that the sum of four thousand dollars ($4,000) was all that the property was worth at that date and all that it would bring; and denies that they also further falsely and fraudulently represented to said complainant that they expected to obtain a decree from the district court of Cass county, Nebraska, licensing him to make such sale.

This defendant, further separately answering complainant's amended bill, denies that the complainant, relying upon such rep-

resentations and supposing that such decree licensing him to make such sale had been obtained, did, on the 17th day of December, 1885, execute as trustee a deed of all of the above-described real estate to said M. O. Donohoe and forwarded the said deed to the said firm of Chapman & Polk for delivery to the said O'Donohoe in execution of said pretended sale, but alleges the fact to be that upon the said report made by said Chapman & Polk in good faith and without any fraud or falsity that Michael O'Donohoe had proposed to purchase said real estate the said complainant forwarded a deed executed by him to said O'Donohoe for said property to Chapman & Polk, to be delivered to said O'Donohoe in execution of the sale made to O'Donohoe by complainant himself at the price fixed by him on said real estate. This defendant admits that said deed so executed by the complainant to O'Donohoe for said real estate was, on the 26th day of January, 1886, duly recorded in the office of the county clerk of Cass county, Nebraska, and that it was again re-recorded in said office, with an additional certificate subsequently obtained, on the 4th day of June, 1886.

This defendant, further separately answering, denies that Chapman & Polk or this defendant, as a member of said firm, made any representations to the complainant which *is* false or which
14 were made with the intention to fraudulently cheat and deceive complainant.

This defendant, further separately answering, denies that it was understood and agreed by and between the said Chapman & Polk and O'Donohoe that said pretended sale was to be in truth and fact a sale to said Polk, and that said Donohoe should pay nothing for said property, and that he should at once, upon receipt from complainant and recording by said Chapman & Polk of a deed to said property running to him, O'Donohoe, execute a deed for said property to said Polk, who would assume and pay off said secured notes, relieving the said O'Donohoe of all responsibility for the payment thereof.

This defendant, further separately answering, denies that in furtherance of said conspiracy and with the intention to defraud complainant, and well knowing that the value of said property was nine thousand dollars ($9,000) and upwards, said O'Donohoe did, on the 27th day of January, 1886, deed to said Polk all of said real estate, but alleges the fact to be that the proposition made by said O'Donohoe to purchase said real estate was made in good faith and with the intent to pay for the same himself with his own money, but that in consequence of his own inability to sell real estate owned by him, out of which he expected to raise the money to pay for the real estate described in complainant's amended bill, he was unable to complete said purchase, and that in consequence thereof and because of the consent and sanction of the complainant thereto the said Polk proposed to take said real estate upon the terms on which the sale had been made by complainant to said O'Donohoe, and that thereupon, the complainant consenting thereto, said O'Donohoe did, on the 20th day of January, 1886, deed to said Polk all of said real estate, which deed was recorded in the office of the county clerk of Cass county,

Nebraska, on the 22nd day of January, 1886, and that on the
15 same day the deed from complainant to O'Donohoe was filed for record, but that it was filed on that day and not sooner because of the inability of the said O'Donohoe to raise the money with which to make the first cash payment of one thousand dollars ($1,000) for said real estate and not for the purpose or with the intent to defraud the complainant or the estate of which he was trustee.

This defendant, further separately answering complainant's amended bill, denies that Chapman & Polk or he as a member of said firm falsely and fraudulently represented to complainant that said purchase by said O'Donohoe would be an advantageous one for the estate represented by the complainant, and that said sum of four thousand dollars ($4,000) was all that said property at that time would bring.

This defendant, further separately answering the amended bill of complainant, denies that said complainant relied upon the representations of Chapman & Polk or of this defendant as a member of said firm in making the said deed as trustee to M. O'Donohoe for said real estate, but alleges that he relied upon his own judgment, based upon the result of his personal inquiries as to the value of said real estate so as aforesaid made by him of the business men of the city of Plattsmouth.

This defendant, further separately answering the amended bill of complainant, denies that the firm of Chapman & Polk or this defendant as a member of said firm ever made any false representations to complainant as to said real estate or as to the value thereof or as to the sale thereof with the intent to fraudulently cheat and deceive complainant.

This defendant, further separately answering said amended bill, alleges that he, the said Samuel M. Chapman, as a member of the firm of Chapman & Polk had nothing whatever to do with said sale to said O'Donohoe, and knew nothing whatever personally in
16 respect thereto until after said deed from complainant, as trustee, had been forwarded, but that whatever was done as to reporting to complainant the proposition made by O'Donohoe was done by the said Milton D. Polk. This defendant denies any and all manner of fraud and any and all manner of conspiracy on his part toward or upon complainant and any and all personal knowledge of the sale of said premises to O'Donohoe by the complainant until long after said deed had been made by the complainant.

This defendant, further separately answering said amended bill, alleges that it was agreed by and between complainant and this answering defendant, as a member of the firm of Chapman & Polk, that a petition for a decree for liscense to complainant to sell said real estate should be filed by said firm after their employment by him as his attorneys in the district court of Cass county, Nebraska, and in case they became satisfied, upon an examination of the law of wills, that the will of Ella V. Davis, deceased, fully empowered the said trustee to sell and convey the real estate of said deceased by good and sufficient title, and that he could fully convey the same

without a license being obtained from the district court therefor, said firm should dismiss said proceedings, withdraw said petition for license and the action and proceedings therefor, and that when complainant should sell said real estate and convey the same he should pay said firm of Chapman & Polk, for their services as his attorneys in that behalf and also in and about the probating of the will of the said deceased, the sum of two hundred dollars ($200), and that this agreement was made at the time when this complainant was at the city of Plattsmouth and fixed the price at which said real estate should be sold. This defendant denies that there were no legal services rendered or performed by the firm of Chapman
17 & Polk or either of them in obtaining decree for license to sell said real estate, and denies that any account rendered to the said complainant by the firm of Chapman & Polk was false in any particultar, but alleges the fact to be that the petition for a decree for license was filed in said court by said Chapman & Polk after the agreement heretofore set out between complainant and said firm, and that after they had become satisfied, upon an examination of the law in respect thereto, that such license was not necessary said petition for a license was withdrawn and dismissed by them from said court.

This defendant, further separately answering said amended bill, denies that the complainant, on or about the 23rd day of August, 1888, learned of any fraud practiced on him by the firm of Chapman & Polk or by this defendant as a member of said firm, but alleges the fact to be that no fraud whatever was ever practiced upon complainant by these defendants or by this defendant as a member of said firm.

This defendant, further separately answering said amended bill, says as to whether there is any sum whatever due upon said notes of O'Donohoe secured by mortgage upon said real estate this defendant has no knowledge or information sufficient to form a belief, and he therefore denies the same.

This defendant, further separately answering, denies all and all manner of unlawful combination or confederacy with Milton D. Polk or with Michael O'Donohoe or with any other person wherewith he is by said bill charged; without this, that there is no other matter, cause, or thing in the said complainant's said amended bill of complaint taken material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dis-
18 missed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL M. CHAPMAN,
By GEORGE W. COVELL,
His Solicitor.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 257, M. Robertson, trustee, *vs.* S. M. Chapman, M. D. Polk, *et al.* Separate answer of S. M. Chapman to amended bill. Filed Mar. 2, 1889. Elmer D. Frank, clerk. George W. Covell, solicitor and att'y for Chapman.

Thereupon, afterwards, to wit, on the said 2nd day of March, 1889, separate answer of M. D. and Kate Polk to amended bill was filed; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of the Estate of Ella V. Davis, Deceased, Plaintiff,
vs.
THE LOMBARD INVESTMENT COMPANY, MILTON D. POLK, SAMUEL M. CHAPMAN, *et al.*, Defendants.

Separate Answer of Milton D. Polk and Kate Polk, His Wife, to Complainant's Amended Bill.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Comes now the defendants Milton D. Polk and Kate Polk, his wife, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, a-d other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, separately
19 answering, say that they admit that the complainant was, by the circuit court of Baltimore, in the State of Maryland, duly appointed as trustee of the estate of Ella V. Davis, deceased, as the successor of one W. A. Stewart.

Further separately answering said amended bill, these defendants admit that at the date of her death Ella V. Davis was the owner of the real estate described in complainant'- bill of complaint, and that her will was duly probated and allowed by the orphans' court of the city of Baltimore and the State of Maryland, and that it was afterwards duly probated and allowed by the probat- court of Cass county, in the State of Nebraska; they admit that under and by the terms of said will full power was given the trustee thereunder to sell, dispose, lease, and convey the property of said testatrix or any part thereof as he might think proper; they deny that by clause seven (7) of the second codicil of said will the eighth clause of said will, empowering the said trustee to sell and dispose of said real estate as above set forth, was revoked and the said trustee empowered to sell only such real estate as yielded no income in case the same could not be leased to advantage; they admit that said Robertson, trustee, in pursuance of the powers conferred on him by

virtue of the appointment and the terms of said will, proceeded to sell said real estate in Cass county, Nebraska, but they deny that said trustee to that end entered into negotiations with defendants Chapman & Polk, a firm composed of Samuel N. Chapman and Milton D. Polk, and employed them to sell said premises. These defendants admit that the said complainant, in pursuance of the powers conferred on him by virtue of his appointment and of the terms of said will, proceeded to sell said real estate in Cass county, Nebraska, and allege that he, the said complainant, in pursuance thereof, came to the city of Plattsmouth, in the county of Cass, in the State of Nebraska, and conferred with the
20 firm of Chapman & Polk, who were then practicing law at the said city of Plattsmouth under the firm name of Chapman & Polk, with respect to the sale of said real estate, but they deny that said complainant entered into any negotiations with the said firm of Chapman & Polk with respect to the sale of said real estate, and deny that any such negotiations ended in the employment by him of said Chapman & Polk to effect a sale of said premises and to do and perform all things necessary, requisite, and legal to the accomplishment of said sale; they deny that said Chapman & Polk were to act in the premises as the agents and attorneys for the said complainant; they deny that complainant was unfamiliar with the values of said real estate, and deny that he relied implicitly upon the statements and representations made to him by said Chapman & Polk and each of them as to the amount for which said real estate should sell; they admit that said firm of Chapman & Polk were employed by the complainant for the purpose of procuring a license from the district court of Cass county, Nebraska, for the sale of said premises in case it should be deemed necessary by said attorneys after an examination of the law governing such sales that such license should be obtained from and issued by and out of said district court of said county. These defendants allege the fact to be the said firm of Chapman & Polk did not make any representations whatever to the complainant as to the value of said real estate nor as to the price at which it would sell, but aver that the said complainant personally consulted and conferred with several leading merchants, bankers, real-estate agents, and business men of the city of Plattsmouth as to the value of said real estate and as to the price at which it should sell, and after having so consulted with such parties, residents of the city of Plattsmouth, personally he fixed as his own price upon said real estate and the
21 price for which he was willing it should be sold to any party who would pay the price so fixed by him for the sale thereof.

These defendants, further separately answering said amended bill, admit that the complainant deemed it safer for him as such trustee to have any sale of such land conducted under the sanction of a license of the district court of said Cass county in case it should be determined by said Chapman & Polk, after a final and full examination of the laws of the State of Nebraska, that it was necessary to have such license issued, and they admit that he employed said

Chapman & Polk to attend to the due probating of said will in said Cass county and to obtain from the district court of Cass county, Nebraska, by due and regular court proceedings for him a license to sell said real estate in case they deemed it necessary after an examination that such license should be granted, and they deny that it was desired by the complainant and that they were employed by the complainant to have any interpretation on construction put upon the seventh clause of the second codicil of said will and the eighth clause thereof.

Further separately answering said amended bill, these defendants deny that Chapman & Polk falsely and fraudulently represented to the complainant that said real estate was at the time of the alleged sale worth about the sum of four thousand dollars ($4,000), and deny that it was worth at said time at least the sum of nine thousand dollars ($9,000); and these defendants allege that the said Chapman & Polk made no representations to complainant whatever that said real estate was worth only four thousand dollars ($4,000). Defendants allege that at the time of said sale said property was not worth more than the sum of four thousand dollars ($4,000), and that the price and sum of four thousand dollars ($4,000) was fixed by the complainant as the price at which he was willing said real estate should be sold and at which he directed that the said real estate should be sold whenever a pur-
22 chaser could be found who would give that price.

These defendants, further separately answering said amended bill, deny that Chapman & Polk or Milton D. Polk as a member of that firm falsely and fraudulently represented to complainant that they had found a purchaser for said property in the person of one Michael O'Donohoe, one of the defendants herein, but they allege that said Michael O'Donohoe made application to purchase said property at the price fixed by said complainant, being the sum of four thousand dollars ($4,000), and that they simply reported to the complainant herein that said Michael O'Donohoe wished to purchase the said premises for that sum and would pay one thousand dollars ($1,000) in cash and the balance by his three notes secured on said property by mortgage in the sum of one thousand dollars ($1,000) each, due respectively in one, two, and three years, bearing interest at seven per centum per annum, and that said complainant directed that said sale should be made to said O'Donohoe for the said price of four thousand dollars ($4,000) and upon said terms.

These defendants, further separately answering said amended bill, deny that said Chapman & Polk or that Milton D. Polk as a member of the firm of Chapman & Polk falsely or fraudulently represented to the complainant that said proposed purchase by said O'Donohoe would be best for the estate, and that four thousand dollars ($4,000) was all that the property at that date would bring, and deny that they falsely and fraudulently represented to the complainant that they expected to obtain a decree from the district court of Case county licensing complainant to make such sale.

These defendants, further separately answering said amended bill, deny that complainant, relying upon such representations and

statements and supposing that said decree licensing him to
23 make such sale had been obtained, did, on the 17th day of December, 1885, execute, as trustee, a deed of all of the real estate described in complainant's bill to the said M. O'Donohoe and forwarded the said deed to the said Chapman & Polk for delivery to the said O'Donohoe in execution of said pretended sale, but allege that said complainant, relying upon his own judgment and upon that of others with whom he had consulted while he was personally present in the city of Plattsmouth, all business men of said city, made said sale himself to t-e said M. O'Donohoe upon the report being made by said Chapman & Polk that said Michael O'Donohoe had made said offer, and that he executed, as trustee, a deed of the said real es-ate on the 17th day of December, 1885, and forwarded the same to the said Chapman & Polk, to be delivered to the said M. O. Donohoe in execution of the said sale to said O'Donohoe made by said trustee himself to the said O'Donohoe, at t-e price and sum fixed by him when in the city of Plattsmouth and upon the terms named by him. They admit that said deed executed by said trustee to said M. O'Donohoe was on the 22nd day of January, 1886, recorded in the office of the county clerk of Cass county, Nebraska, and that it was recorded, with an additional certificate subsequently obtained, in said clerk's office on the 4th day of June, 1886.

These answering defendants deny that any representations were made by Chapman & Polk to the complainant that were false and fraudulent and that were made with the intent to cheat and defraud the complainant herein, but allege that whatever representations they did make, if any, in respect to said property were true in all respects, and that they did not make any representations whatever to the complainant with the intention of fraudulently cheating and deceiving him.

These answering defendants further deny that it was understood and agreed by and between Chapman & Polk or Milton D.
24 Polk and M. O'Donohoe that said pretended sale should be in reality a sale to said Polk, and that M. O'Donohoe should pay nothing for said property, and that he should at once, upon receipt from the complainant and recording by said Chapman & Polk of the deed of said property running to him, O'Donohoe, execute a deed to said property to said Polk, who would assume and pay off the said mortgage notes, relieving said O'Donohoe of all responsibility for the payment thereof; but allege that said O'Donohoe purchased said property in good faith, intending at the time he purchased the same to pay for the same with his own money and out of the proceeds of the sale of his own property.

These defendants, further separately answering said amended bill, deny that in pursuance of said confederacy and with the intention to defraud complainant, and well knowing that the value of said property was nine thousand dollars ($9,000) and upwards, the said O'Donohoe did, on the 20th day of January, 1886, deed to said Polk all of said property, but allege the fact to be that after the said deed from the complainant herein executed to the said O'Donohoe

had been sent to the city of Plattsmouth to the care of Chapman & Polk, to be delivered to him, the said O'Donohoe failed to raise the money necessary to make the first cash payment of one thousand dollars ($1,000) for said real estate because of his being disappointed in the sale of his property out of which he expected to raise said sum of one thousand dollars ($1,000), and that thereupon the said Milton D. Polk so informed the complainant herein, and that he thereupon informed him that in consequence of said disappointment of the said O'Donohoe to sell his property he could not fulfill the terms of said purchase, and the said Milton D. Polk proposed to complainant that if he, complainant, was willing and so desired, he, the said Milton D. Polk, would pay the said sum of four thousand dollars ($4,000) for said property and take the same off of the hands of the said O'Donohoe by taking a deed from the said O'Donohoe to himself therefor and fulfilling and complying with the terms of the said sale to the said O'Donohoe. These defendants allege that the said real estate was not worth the sum of nine thousand dollars ($9,000) and upwards, but that it was not worth more than the sum of four thousand dollars ($4,000) at the time when the said O'Donohoe deeded the same to the said Milton D. Polk by the direction and with the consent of the complainant herein. They admit that the said deed from said O'Donohoe to the said Milton D. Polk was recorded in the office of the county clerk of Cass county, Nebraska, on the 23rd day of January, 1886, and that on the same day the deed from complainant to said O'Donohoe was also filed for record, but they allege that said deed from complainant to said O'Donohoe was filed for record on that day and was not filed sooner than that time because of the disappointment, hereinbefore set forth, of the said M. O. Donohoe in selling his real estate and raising the money to make the cash payment for the real estate in complainant's bill described, and that it was not done for the purpose to defraud complainant or the estate of the said deceased, and was not done in pursuance of any conspiracy to defraud the complainant or the estate of the said deceased.

These defendants, further separately answering complainant's amended bill, deny that on the 26th day of January, 1886, the said Chapman & Polk rendered a false and fraudulent account of their doings in the premises, as set out in complainant's amended bill, and deny that there were no legal services performed by said Chapman & Polk or either of them in obtaining a decree for license to sell said real estate, and deny that no taxes were paid in the sum of three hundred — nineteen dollars ($319) upon said property out of the purchase price of said property, but allege the fact to be that said firm of Chapman & Polk, as attorneys of and for the complainant, at the complainant's request, made application to the district court of Cass county, Nebraska, for license to sell said real estate with the understanding and agreement with the complainant that in case they became satisfied, after an examination of the law governing such cases, that it was not necessary to have a license from the district court of Cass county, Nebraska, issued for that purpose, such petition should be withdrawn, and they after

making such examination became fully satisfied that such license was not necessary, and that under the terms of said will the said complainant, as trustee for said estate, had full power and authority to convey the title to said premises without the intervention of the district court of Cass county, Nebraska, and without a license being granted by said court for that purpose, and therefore they withdrew said petition from said court, but allege that their services performed for said complainant were worth the sum of two hundred dollars ($200).

These defendants deny that the petition in the district court for license was filed by Chapman & Polk after said sale by the complainant to the said O'Donohoe of said real estate, and these defendants deny that said Chapman & Polk committed any fraud or practised any fraud on the complainant herein, and they therefore deny that the complainant on or about the 23rd day of August, 1888, learned of any fraud practised on him by them. These defendants admit that all of the notes of the said O'Donohoe secured by his said mortgage are not paid, but they deny that there is due on said notes according to the tenor thereof the sum of eighteen hundred seventy-three dollars and fifteen cents ($1,873.15), together
27 with interest on one thousand dollars ($1,000) thereof from the 10th day of December, 1885, and on eight hundred seventy-three dollars and fifteen cents ($873.15) thereof from March 10th, 1887, at the rate of seven per centum per annum, but these defendants say that whatever is due upon said notes according to the tenor thereof they are ready and willing to pay when said amount is ascertained.

These defendants, further separately answering said amended bill, admit that said Milton D. Polk and his wife, Kate, on the 21st day of March, 1888, mortgaged to the defendant Frank Carruth lots seven, eight, nine, ten, eleven, and twelve (7, 8, 9, 10, 11, & 12), in block five (5), and lots one, two, and three (1, 2, & 3), in block eight (8), White's addition to the city of Plattsmouth, and that said mortgage was recorded at the day and in the book alleged in complainant's amended bill; but they allege that said mortgage was made in good faith for money borrowed, being the sum set forth in said mortgage of the said Frank Carruth by the said Milton D. Polk, and that the payment thereof was secured by a mortgage on said real estate, but that said mortgage debt has been fully paid and the said mortgage has been fully satisfied and discharged of record.

These defendants, further separately answering complainant's amended bill, admit that on the 15th day of May, 1886, said Milton D. Polk and his wife, Kate, conveyed by warranty deed to the defendant W. W. Drummond lots one, two, and three (1, 2, & 3), in block eight, White's addition, and lots one, two, and three (1, 2, & 3), in block eighty-nine (89), in the city of Plattsmouth, but aver that said lots were sold to said Drummond in good faith by the said Milton D. Polk and purchased by the said Drummond in good faith and paid for by him in cash, and that he is a *bona fide* purchaser and owner of said property.

28 These defendants admit that on the 24th day of December, 1886, said Drummond mortgaged said premises to the defendant Peter Elingson for the sum of one thousand one hundred seventy-two dollars for money borrowed by the said Drummond of the said Elingson, and allege that said Elingson is a *bona fide* mortgagee thereof.

These defendants, further separately answering said complainant's amended bill, admit that on the 24th day of August, 1887, said Milton D. Polk and wife, Kate, mortgaged to the defendant Sam. Waugh the west twenty (20) feet of lot twelve (12), in block twenty-nine (29), in the city of Plattsmouth, for the sum of one thousand six hundred and eighty dollars for the purpose of collaterally securing the said Sam. Waugh for the payment of notes of one Milton J. Kennard, sold by said Milton D. Polk to the said Sam. Waugh, which said notes were notes endorsed by the said Milton D. Polk to the said Sam. Waugh, and that said Samuel Waugh is a *bona fide* mortgagee of said premises for a consideration as aforesaid for collaterally securing the payment of said notes.

These defendants, further separately answering the amended bill herein, admit that on the 21st day of January, 1886, the said Milton D. Polk and wife, Kate, conveyed by warranty deed to the defendant Velasco V. Leonard the east one-half (½) of lot ten (10), in block twenty-eight (28), in the city of Plattsmouth, but allege that they sold the said real estate to the said Leonard for cash, and the said Leonard is a *bona fide* owner and holder of said real estate for cash paid therefor.

These defendants, further separately answering said amended bill, admit that said Leonard mortgaged said property to the said defendant, The Lombard Investment Company, under date of the 21st day of July of said year, for the sum of two thousand dollars ($2,000) for money borrowed by him of said company, and that, too, for the purpose of securing the loan of the same to him, and allege that said Lombard Investment Company is a *bona fide* mortgagee
29 of said real estate for that sum.

These defendants, further separately answering said amended bill, deny that each and every of the conveyances mentioned in complainant's amended bill, made by the said Polk and his grantees, were made in fraud of the rights of complainant, and deny that at the date of each and every of said conveyances and encumbrances the grantees and mortgagees knew or should have known that said conveyances and encumbrances were in fraud of complainant's right, and deny that they knew that they were beyond the right, power, and authority of said Polk to make; but these defendants allege the fact to be that said Polk was a *bona fide* purchaser of said premises, and that he had full right, power, and authority to make all of the conveyances to portions of said property and mortgages on other portions thereof which he did make, and that none of the conveyances or mortgages mentioned in complainant's amended bill were made in fraud of the rights of the complainant herein or any other person.

These defendants, further answering said amended bill, deny

that said claims and encumbrances mentioned in complainant's bill are inferior and subordinate to the rights of the complainant in said premises.

These defendants, further separately answering said amended bill, admit that the defendant Milton J. Kennard was the maker of the notes defendant Polk secured by said mortgage to said Samuel Waugh, which was given as aforesaid to said Waugh as collateral security for the payment of said notes.

These defendants, further separately answering the said amended bill, say they have no knowledge or information sufficient to form a belief as to whether Uriah V. Mathews or H. A. Waterman & Son have and claim mechanics' liens on portions of said real estate, based on work performed for and at the instance of the defendant Wellington W. Drummond, and they therefore deny the same.

Further separately answering, these defendants deny all and all manner of unlawful combination or confederacy wherewith they are by said bill charged; without this, that there is no other matter, cause, or thing in said complainant's said amended bill of complaint taken material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied is true, to the knowledge or belief of the said defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

M. D. POLK &
KATE POLK,
By GEORGE W. COVELL,
Their Solicitor and Att'y.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 257, M. Robertson, trustee, *vs.* S. M. Chapman, M. D. Polk, *et al.* Separate answer of M. D. Polk and Kate Polke to amended bill. Filed Mar. 2, 1889. Elmer D. Frank, clerk. G. W. Covell, sol'r & att'y for M. D. & Kate Polk.

Thereupon, afterwards, to wit, on the said 2nd day of March, 1889, answer of V. V. Leonard was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of Ella V. Davis, Deceased, Plaintiff,
vs.
VELASCO V. LEONARD, Impleaded with SAMUEL M. CHAPMAN, Milton D. Polk, *et al.*, Defendants.

Separate Answer of V. V. Leonard. 257, M.

31 *The Answer of Velasco V. Leonard to the Bill of Complaint of the said Alexander H. Robertson, Trustee, etc.*

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Comes now the said Velasco V. Leonard and, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage to be had or taken at any time of the many manifest errors and inconsistancies of the complainant's bill of complaint, answering for himself only the said bill of complaint, saith that he denies each and every allegation, averment, and statement therein contained, so far as the same relate to this defendant, except the allegation that the said Milton D. Polk and wife conveyed by warranty deed to this defendant the east half (E. ½) of lot No. ten (10), in block No. twenty-eight (28), in the city of Plattsmouth, in Cass county, Nebraska, on the 21st day of January, 1886, and except the allegation that on the 21st day of July of said year this defendant mortgaged said premises to the defendant The Lombard Investment Company to secure a loan to him made thereon of two thousand dollars. This defendant denies that there was any fraud in the conveyance by said Polk and wife of said premises to him, and denies that he had any knowledge or information whatever of any fraud or conspiracy or confederation on the part of the said Milton D. Polk, Samuel M. Chapman, and Michael O'Donohoe in respect to said property against complainant, and denies that the complainant herein or his *cestui que trusts* has or have any rights whatever in or to said property as against this answering defendant, and denies that there was any fraud on the part of the said Chapman, Polk, and O'Donohoe in respect to said premises.

And this defendant alleges that he purchased the said premises in good faith and for a full and valuable consideration, namely, the sum of sixteen hundred ($1,600) dollars, in lawful money,
32 and that he paid said consideration, in cash, to the said Milton D. Polk at the time of the said conveyance, and that he is a *bona fide* purchaser of said premises and is the owner and holder thereof by title in fee simple under and by virtue of a general warranty deed therefor, recorded January 22, 1886, in Book 12, Twelve, of Deeds, on page 223 thereof, of Cass county records.

And this defendant especially denies that he knew or should have known that the conveyances from complainant to O'Donohoe, from O'Donohoe to Milton D. Polk, and from Milton D. Polk to him

were in fraud of plaintiff's rights and beyond the right, power, or authority of the said Polk to make.

And this defendant especially denies that his claim of right and title in and to said premises is inferior and subordinate to the rights and claims of plaintiff, and alleges that the complainant has no rights whatever in and to said premises as against this answering defendant.

And this answering defendant denies all and all manner of confederacy or conspiracy whatever on his part or on the part of his grantors against the alleged rights of the said complainant.

Wherefore this defendant asks that this honorable court, upon the hearing of this cause, dismiss this complainant's bill so far as the same relates to this defendant, and *and* humbly prays that this defendant be dismissed out of this honorable court with his reasonable costs herein most wrongfully sustained.

V. V. LEONARD,
By GEORGE W. COVELL & ALLEN BEESON,
His Attorneys & Solicitors and of Counsel for Him.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 257, M. Alexander H. Robertson, trustee, &c., pl'ff, *vs.* Samuel M. Chapman and V. V. Leonard, impleaded with M. D. Polk *et al.*, defendants. Separate answer of V. V. Leonard. Refiled Mar. 2, 1889. Elmer D. Frank, clerk. G. W. Covell & Allen Beeson, att'ys for Leonard.

33 Thereupon, afterwards, to wit, on the said 2nd day of March, 1890, separate answer of Samuel Waugh was filed in said case; which said answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of Ella V. Davis, Deceased, Plaintiff,
vs.
SAMUEL WAUGH, Impleaded with SAMUEL M. CHAPMAN, MILTON D. POLK, W. R. DRUMMOND, *et al.*, Defendants.
} No. 257, M.

Separate Answer of Samuel Waugh.

Separate answer of the defendant Samuel Waugh, impleaded with Samuel M. Chapman *et al.*, to the bill of complaint of Alexander H. Robertson, trustee of Ella V. Davis, deceased, plaintiff.

To the honorable the judges of the circuit court of the United States for the district of Nebraska:

Comes now the defendant Samuel Waugh, impleaded with Samuel M. Chapman *et al.*, and, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage that can at any time be had or taken to and of the many manifest

errors and inconsistencies of the complainant's bill of complaint, answering for himself only the said bill of complaint, saith that he denies each and every allegation, averment, and statement therein contained so far as the same relate to this defendant except the allegation that the said Milton D. Polk and wife mortgaged to this defendant the west twenty feet of lot No. twelve (12), in block No. twenty-nine (29), in the city of Plattsmouth, in Cass county, Nebraska, on the 24th day of August, 1887, for the sum of sixteen hundred and eighty ($1,680) dollars; and defendant alleges that he loaned the said Milton D. Polk said sum on said property
34 in good faith in cash without any knowledge or suspicion whatever that the complainant or any other person whomsoever claimed to have any rights or interests whatever in or to said premises, and took a mortgage therefor of that date on said premises to secure said sum so loaned by him thereon to the said Polk, and that said mortgage was filed for record in the registry of Cass county, Nebraska, on the 31st day of August, 1887, and duly recorded in Book V of Mortgages of said records on page 129 thereof, which said mortgage was in due form of law and was duly acknowledged so as to entitle it to be recorded.

This defendant denies that there was any fraud in the said mortgage by said Polk and wife to him, and denies that he had any knowledge or information or suspicion of any fraud or conspiracy or confederation on the part of the sa-d Milton D. Polk, Samuel M. Chapman, and Michael O'Donohoe in respect to said property against complainant, and denies that the complainant herein or his *cestui que trusts* has or have any rights whatever in or to said property as against said answering defendant, and denies that there was any fraud on the part of the said Chapman, Polk, and O'Donohoe in respect to said premises; and this defendant alleges that he is a *bona fide* mortgagee of said premises, and as such is entitled to the protection of this honorable court as such *bona fide* mortgagee without notice.

And this defendant especially denies that he knew or should have known that the conveyances from complainant to O'Donohoe and from O'Donohoe to Milton D. Polk were in fraud of plaintiff's rights and beyond the right, power, or authority of the said Polk to make.

And this defendant denies that his claim of right in and lien upon said premises is inferior to and subordinate to the rights and claims of plaintiff, and alleges that the complainant has no rights whatever in and to said premises as against this answering
35 defendant.

And this answering defendant denies all and all manner of confederation or conspiracy whatever on his part or on the part of Milton D. Polk, mortgagor, to him against the alleged rights of complainant.

Wherefore this defendant asks that this honorable court, upon the hearing of this cause, dismiss the complainant's bill so far as the same relates to this defendant, and humbly prays that this de-

fendant be dismissed hence with his reasonable costs and charges in this behalf most wrongfully sustained

SAMUEL WAUGH,
By GEORGE W. COVELL &
ALLEN BEESON,
His Attorneys and Solicitors a-d of Counsel for Him.

Upon the back of said answer appear endorsements in words and figures following, to wit:

No. 257, M. Alexander H. Robertson, trustee, &c., plaintiff, *vs.* Samuel M. Chapman & Samuel Waugh, impleaded with M. D. Polk *et al.*, def'ts. Separate answer of Samuel Waugh. Refiled Mar. 2, 1889. Elmer D. Frank, clerk. G. W. Covell and Allen Beeson, att'ys for Waugh.

Thereupon, afterwards, to wit, on the 4th day of March, 1889, answer of H. A. Waterman & Son was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee, *vs.* SAM'L M. CHAPMAN *et al.* } Answer of H. A. Waterman & Son.

Now come H. A. Waterman & Son, defendants, impleaded with others, and for answer to bill of complaint filed in the above-
36 entitled cause say—

I. That these defendants deny the truth of the allegations therein made so far as they relate to these defendants or their interests.

II. These defendants deny any knowledge of fraud of the complainant's rights as averred.

III. Defendants, further answering, allege that they have an interest in a part of the property in controversy in this suit, viz., lots (1), (2), (3), in block (89), in the city of Plattsmouth, and lots (1), (2), & (3), in block (8), White's addition to said city of Plattsmouth, Cass Co., Nebr., arising by virtue of a mechanic's lien legally secured upon said described premises, more particularly described in words as follows:

That on or about the 20th day of July, 1886, the defendants H. A. Waterman & Son entered into an oral contract with Wellington W. Drummond, codefendant, to furnish him lumber and material for the erection of a dwelling-house upon the said described lots.

IV. In pursuance of said contract H. A. Waterman & Son furnished the said W. W. Drummond, for the erection of said house, on and between the 20th day of July, 1886, and the 6th day of Dec., 1886, lumber and material to amount and value of $1,631.74.

V. The said Wellington W. Drummond at the time H. A. Waterman & Son furnished the said lumber and material for the con-

struction of said building was the owner in fee of said lots, holding title by virtue of a warranty deed from Milton D. Polk and wife, codefendants, who in*n* turn held title to said property by virtue of a warranty deed from M. O'Donohoe, who held title by virtue of a warranty deed from the said Alexander H. Robertson, trustee of the estate of Ella V. Davis, deceased, and the record of the title to said property, appearing on the records of Cass county, Neb., showing the same to be clear and perfect up to the time of the transfer of the title by the said Milton D. Polk.

37 VI. On the 29th day of December, 1886, and within five months of the time of furnishing said material, the said H. A. Waterman & Son made an account in writing of the items of such material furnished the said W. W. Drummond under said contract, and after making oath thereto, as required by law, filed the same in the clerk's office of Cass county, Neb., claiming a mechanic's lien therefor upon said lots and the dwelling-house thereon.

VII. That the sum of $1,036.60, with interest from the 29th day of December, 1886, still remains due and unpaid on said account.

VIII. The defendants H. A. Waterman & Son deny that their claim is junior or inferior to the alleged interest of the said complainant, Alexander H. Robertson, trustee, but aver that it is now a subsisting and valid lien on and against the said premises and senior to any rights the complainant herein may have.

Wherefore the defendants H. A. Waterman & Son pray this honorable court that the complainant's bill, so far as it relates to these defendants, be dismissed, and that these defendants be dismissed from any further responsibility in this suit; that the rights of the said H. A. Waterman & Son be declared senior to any interests the complainant may be found to have in the premises in litigation, and for such other and further relief as shall be deemed equitable.

ROB'T B. WINDHAM,
Att'y for H. A. Waterman & Son.

STATE OF NEBRASKA, }
Cass County, } *ss:*

John Waterman, being first duly sworn, deposes and says he is a member of the firm of H. A. Waterman & Son, defendants herein; that he has heard read the foregoing answer to complainant's bill and knows the contents thereof, and that the facts therein set forth are true, as he verily believes.

JOHN WATERMAN & SON.

38 Subscribed in my presence and sworn to before me this 2nd day of March, 1889.

[SEAL.] ——— ———.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 257, M. Alexander H. Robertson, trustee, *vs.* Samuel M. Chapman *et al.* Answer of H. A. Waterman & Son. Filed Mar. 4, 1889. Elmer D. Frank, clerk. R. B. Windham, att'y for Waterman & Son.

Thereupon, afterwards, to wit, on the said 4th day of March, 1889, demurrer was filed in said case; which said demurrer is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of Ella V. Davis,
vs.
LOMBARD INVESTMENT CO., MILTON D. POLK, SAMUEL M. Chapman, Michael O'Donohoe, Frank Carruth, Samuel Waugh, Velasco V. Leonard, Kate Polk, Anna O'Donohoe, Uriah V. Mathews, H. A. Waterman & Son, & Milton J. Kennard. } No. 257, M.

The Demurrer of Milton J. Kennard, Defendant, to the Amended Bill of Complaint of Alexander H. Robertson, Trustee, Plaintiff.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such matter and form as the same are therein set forth or alleged, does demur thereto, and for cause of demurrer shows that the said plaintiff has not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought or prayed for from or against this defendant, and the defendant demands the judgment of
39 this honorable court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed, with his reasonable costs in this behalf sustained.

C. A. BALDWIN,
Solicitor for Defendant.

Upon the back of said demurrer appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska. Alexander H. Robertson, trustee, *vs.* Samuel Chapman *et al.* Demurrer. Filed Mar. 4, 1889. Elmer D. Frank, clerk. C. A. Baldwin, solicitor for defendant.

Thereupon, afterwards, to wit, on the said 4th day of March, 1889, separate plea of defendant Ellingson was filed in said cause; which said plea is in words and figures following, to wit:

In United States Court, District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee,
vs. } Answer.
MILTON D. POLK *et al.*

Comes now Peter Ellingson, one of the defendants in the above-entitled cause, and for answer to plaintiff's bill in this cause filed, as also to the amended bill, would show to this court that this defendant is the *bona fide* holder of a mortgage on a part of the prop-

erty in said bills of complaint set forth; that said Polk had transferred lots 1, 2, & 3, bl'k 89, Plattsmouth, and lots 1, 2, & 3, bl'k 8, White's addition to Plattsmouth, to W. W. Drummond, and said Drummond had, prior to commencement of this action, mortgaged to this defendant.

This defendant specially denies any fraud or knowledge of fraud in any transaction between any of the parties to this action, and will show to the court that if any fraud whatever was practiced by any party to this action this plaintiff neglected and refused
40 to make the same known or to in any manner provide for the protection of the rights of this defendant.

Reference is herein made also to the sworn answer heretofore filed in this cause.

Wherefore this defendant asks that this action be dismissed as to this defendant; that he be permitted to go hence and recover his costs and attorney's fees in and about this cause expended.

PETER ELLINGSON,
By BALLOU & BROWNE, *His Att'ys.*

Upon the back of said plea appear endorsements in words and figures following, to wit: No. 257, M. A. H. Robertson, trustee, *vs.* Milton D. Polk *et al.* Separate plea of defendant Ellingson. Filed Mar. 4, 1889. Elmer D. Frank, clerk. Ballou & Browne, for Ellingson.

41 Thereupon, afterwards, to wit, on the 30th day of March, 1889, replications were filed in said cause; which said replications are in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.*
} No. 257, M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer of H. A. Waterman & Son to Amended Bill, Defendant.

The repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this

honorable court shall direct, and humbly prays as in and by his said amended bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit
42 court, district of Nebraska. In equity. Alexander H. Robertson, trustee, *vs.* Sam'l M. Chapman *et al.* Replication. Filed March 30, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

43 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.*
} No. 257, M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer of Sam'l M. Chapman to Amended Bill, Defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray- as in and by his said amended bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, docket M. U. S. circuit court, district of Nebraska. In equity. Alexander H. Robertson, trustee, *vs.* Sam'l M. Chapman *et al.* Replication. Filed Mar. 30, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

44 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.*
No. 257, M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer of Peter Ellingson to Amended Bill, Defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray- as in and by his said amended bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska. In equity. Alexander H. Robertson, trustee, *vs.* Sam'l M. Chapman *et al.* Replication. Filed Mar. 30, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

45 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.*
No. 257, M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer of Lombard Investment Co. to the Amended Bill, Defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any

other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said amended bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska. In equity. Alexander H. Robertson, trustee, *vs.* Sam'l M. Chapman *et al.* Replication. Filed Mar. 30, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

46 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.*
} No. 257, M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer of Samuel Waugh to Amended Bill, Defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said amended bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska. In equity. Alexander H. Robertson, trustee, *vs.* Samuel M. Chapman *et al.* Replication. Filed Mar. 30, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

47 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.*
} 257, Doc. M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer of Velasco V. Leonard to the Amended Bill, Defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said amended bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska, in equity. Alexander H. Robertson, trustee, *vs.* Sam'l M. Chapman *et al.* Replication. Filed Mar. 30, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

48 In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.*
} 257, M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer of Milton D. Polk and Kate Polk to Amended Bill, Defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insuffi-

cient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said amended bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska. In equity. Alexander H. Robertson, trustee, *vs.* Sam'l M. Chapman *et al.* Replication. Filed Mar. 30, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

49 Thereupon, afterwards, to wit, at the May term of said court, on the 13th day of May, 1889, the following proceedings were had and done in said cause, as appears of record on folio 410, Journal "N" of said court, to wit:

A. H. ROBERTSON, Trustee,
vs.
SAMUEL M. CHAPMAN *et al.* } 257, M.

On motion of the complainant leave is granted him by the court to file replication herein instanter.

Thereupon, afterwards, to wit, on the said 13th day of May, 1889, replication was filed in said case; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEX. H. ROBERTSON, Trustee,
vs.
SAM'L M. CHAPMAN *et al.* } 257, M.

The Replication of Alex. H. Robertson, Plaintiff, to the Answer of Michael O'Donohoe to Amended Bill, Defendant.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto say that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained

material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed
50 and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska. In equity. Robertson, trustee, *vs.* Chapman *et al.* Replication. Filed May 13, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

Thereupon, afterwards, to wit, on the 1st day of June, 1889, answer of defendant Lombard Investment Company was filed in said case; which answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of the Estate of Ella V. Davis, Deceased, Complainant,
vs.
SAMUEL M. CHAPMAN, LOMBARD INVESTMENT COMPANY, MILTON D. POLK, Michael O'Donohoe, Frank Carruth, Samuel Waugh, Velasco V. Leonard, Kate Polk, Anna O'Donohoe, Uriah V. Mathews, H. A. Waterman & Son, and Milton J. Kennard, Defendants.

The Separate Answer of the Def't Lombard Investment Company to the Bill and Amended Bill of the Complainant.

This defendant, for answer to the bill and amended bill of the complainant in the above-entitled cause, avers that at the time of commencing this action and long prior thereto and up to the
51 present time this defendant, Lombard Investment Company, disclaims to have or own any interest, right, title, or lien in, to, or against the real estate set out in complainant's bill of complaint.

For further answer herein this defendant avers that it is true, as averred in complainant's said bill and amended bill, that on or about the 21st day of January, A. D. 1886, its codefendant, Milton D. Polk, conveyed by warranty deed, to Velasco V. Leonard, the east half of lot ten (10), block twenty-eight (28), in the city of Plattsmouth, and that on or about the 21st day of July of the same year the defendant Velasco V. Leonard and Rose Leonard made, executed, and delivered to this defendant, Lombard Investment Company, a mortgage deed upon the said east half of lot ten (10),

block twenty-eight (28), for the purpose of securing a loan for the sum of $2,000.

This defendant avers that during the month of July or the fore part of August, A. D. 1886, this defendant, Lombard Investment Company, assigned, sold, conveyed, delivered, and endorsed the real-estate mortgage bond made, executed, and delivered by the said Velasco V. Leonard and Rose A. Leonard to the said Lombard Investment Company, representing said $2,000, to one Miss Mary E. Barnard, who is a citizen of the State of Vermont; that said bond was sold, assigned, and delivered for valuable consideration in the ordinary course of business and prior to the maturity thereof, and that this defendant is informed that said Mary E. Barnard is still the owner of said paper, without notice of any equities against said real estate.

This defendant further avers that the only interest it ever had in said premises was derived from the mortgage securing said $2,000, as set out in complainant's bill of complaint, and that since the assignment and sale of said bond and mortgage deed securing the same this defendant has had no lien, title, right, or interest in, to, or against said premises.

Wherefore this defendant prays that it may be dismissed with its costs, most wrongfully sustained.

D. H. ETTIEN,
Solicitor for the Def't Lombard Investment Co.

52 Upon the back of said answer appear endorsements in words and figures following, to wit: No. 257, M. In the U. S. circuit court for the district of Nebraska. Alexander H. Robertson, trustee, complainant, *vs.* Samuel M. Chapman *et al.*, def'ts. Answer of def't Lombard Inv. Co. to bill and amended bill of complaint. Filed Jun- 1, 1889. Elmer D. Frank, clerk. D. H. Ettien, solicitor for def't Lombard Inv. Co.

Thereupon, afterwards, to wit, at the May term of said court, on the 17th day of June, 1889, the following proceedings were had and done in said cause, as appears of record on folio 547, Journal "N" of said court, to wit:

A. H. ROBERTSON, Trustee,
vs.
SAM. M. CHAPMAN *et al.*
} 257, M.

On motion leave is granted defendant O'Donohoe by the court to amend his answer herein to-day.

Thereupon, afterwards, to wit, on the said 17th day of June, 1889, answer of O'Donohoe was filed in said case; which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

A. H. ROBERTSON, Trustee of the Estate of Ella V. Davis, Deceased, Plaintiff,
vs.
SAMUEL M. CHAPMAN, MILTON D. POLK, M. O'DONOHOE, *et al.*, Defendants.

Separate Answer of M. O'Donohoe.

Separate answer of M. O'Donohoe, one of the defendants, to the bill of complaint of A. H. Robertson, trustee of the estate of Ella V. Davis, deceased.

To the honorable the judges of the United States circuit court for the district of Nebraska:

Comes now the defendant M. O'Donohoe, and for his separate answer to the complainant's amended bill of complaint,
53 now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said amended bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith that he admots that the complainant is a resident of the city of Baltimore, State of Maryland, and that each and all of the defendants reside at the places respectively set out in complainant's bill of complaint.

Admits that Ella V. Davis departed this life in 1881 in the city of Baltimore; that she left a will and two codicils thereto, and that the complainant was trustee of such will, being the successor in trust of William A. Stewart, trustee, by appointment of the circuit court of Maryland.

Admits that Ella V. Davis at the time of her death was seized in fee of the lands described in complainant's amended bill.

Denies that lots 3 and 4, block 2, Plattsmouth, and lot 7, block 5, White's addition to Plattsmouth, yielded an income of about $35 per month, but alleges that said income-bearing lots yielded no more than $10.00 per month.

Admits that said will was duly probated and allowed by the orphans' court of Baltimore county, Maryland, and was afterwards probated and allowed by the probate court of Cass county, Nebraska.

Admits that by the terms of said will full power was given the trustee thereunder to sell and dispose of, lease, and convey the estate and property of said testatrix or any part thereof as he might think proper; denies that by clause 7th of the second codicil to said will the 8th clause of said will, empowering said trustee to
54 sell and dispose of said estate, as above set forth, was revoked and the said trustee empowered to sell only such real estate as yielded no income in case the same should not be leased to advantage.

Denies that complainant was unfamiliar with the value of said real estate and relied implicitly upon the statements and representations made to him by said Chapman & Polk and each of them as to the amount for which said real estate should sell, but alleges the fact to be that said complainant came in person to the city of Plattsmouth and made diligent enquiry of the real-estate men, bankers, and business men of said city concerning the value of said property, and that such business men represented to said complainant the true value of said real estate at that time, and that whatever sale was made of said estate by complainant was based upon such representations of disinterested parties.

Denies that said real estate at said time was worth at least the sum of $9,000, but alleges that said property at said time was not worth to exceed the sum of $4,800.

Denies that said Chapman & Polk falsely and fraudulently represented to complainant that they had found a purchaser in the person of this answering defendant who would pay for said property the amount of $4,000, $1,000 in cash and the balance by his notes, secured by mortgage on said real estate, in the sum of $1,000 each, due in one, two, and three years, bearing interest at the rate of 7 % per annum, but alleges the fact to be that said Chapman & Polk, at the request of this answering defendant, notified complainant that he (this answering defendant) wished to purchase said real estate at said price; that after some correspondence this answering defendant did purchase said property in good faith, intending to keep the same for his own use; that soon afterwards
55 this answering defendant became satisfied it would be impossible for him to pay the balance due on said property, namely, $3,000, without great inconvenience to him; that thereupon this answering defendant for a good and valuable consideration sold and conveyed said property to Milton D. Polk, one of the codefendants herein; that each of said sales *were bona fide* and without any collusion between this defendant and his codefendants; that each of said transactions was complete and entire in itself, and also that at the time of said transaction the full value thereof was paid in each instance, and there was no intention on the part of this defendant to defraud in any manner the estate of said deceased.

Denies that said defendants Chapman & Polk further falsely and fraudulently represented to complainant that said purchase by this answering defendant would be the best for the estate, and that $4,000 was all that the property at that time would bring, and denies that they further falsely and fraudulently represented to complainant that they expected to obtain a decree from the district court of Cass county licensing him to make such sale; but alleges the fact to be that if any representations were made to complainant as to said estate and said sale they were made in good faith, and that the sum of $4,000 was all that said property at said time was worth in the market, and that said sale was to the benefit of said estate.

Denies that complainant relied in any manner upon any representations made to him by said Chapman & Polk; denies that com-

plainant, relying upon any such representations and supposing that said decre- licensing him to make said sale had been obtained, did on the 17th day of December, 1885, execute as trustee a deed of all the above-described real estate to this answering defendant and forwarded said deed to said Chapman & Polk for delivery to this answering defendant in execution of said pretended sale, which
56 said deed was, on the 22nd day of January, 1886, duly recorded in the office of the clerk of Cass county, Nebraska, with an additional certificate, and afterwards re-recorded in said office on the 4th day of June, 1886, but alleges the fact to be that complainant relied at all times in said transactions upon his own judgment and knowledge gained from his personal interviews with the business men, bankers, and real-estate men of the city of Plattsmouth and from actual view of said property, and that acting upon his own judgment he made and executed a deed as trustee of said estate to this answering defendant for a full and valuable consideration and forwarded the same to Chapman & Polk for delivery to this answering defendant, and that the same was recorded in the office of the county clerk of Cass county and afterwards re-recorded therein with a certificate subsequently obtained.

Denies that each and every representation as above set forth so made to complainant by Chapman & Polk *were* false and made with the intent to fraudulently cheat and deceive complainant; denies that it was understood and agreed by and between said Chapman & Polk and this answering defendant that said pretended sale was to be in reality a sale to said Polk; that this answering defendant should pay nothing for this property, and that he should at once, upon receipt from complainant and recording by said Chapman & Polk of a deed of said property running to him, this answering defendant, execute a deed of said property to said Polk, who would assume and pay off the said mortgage notes, relieving this answering defendant of all responsibility for the payment thereof; denies that in pursuance of said conspiracy and with the intention to defraud complainant and well knowing that the value of said property was nine thousand dollars and upwards, this answering defendant did on the 20th day of January, 1886, deed to said Polk all
57 of said real estate, but alleges the fact to be that there was no understanding by this answering defendant that said sale should in fact be a sale to said Polk, and that said deed from complainant to this answering defendant was not recorded sooner than it was for the reason that this answering defendant experienced difficulty in raising the first $1,000 in cash which he was compelled to pay before said Chapman & Polk would deliver said deed to him; that at the time said property was sold by complainant it was worth only $4,000 on the market, and that when this answering defendant deeded said property to said Polk it was done for a good and valuable consideration, and that said deed was duly recorded in the office of the county clerk of Cass county, Nebraska, on the 22nd day of January, 1886.

Denies that this answering defendant paid nothing in cash or other valuable consideration for said deed, but alleges the fact

to be that this answering defendant at the time said deed was delivered paid the consideration therefor as set forth in said deed, namely, $1,000 in cash and his three notes for $1,000 each, due in one, two, and three years from date, with interest thereon at the rate of 7% per annum.

Denies that complainant on or about the 23rd day of August, 1888, for the first time learned of said fraud practiced on him, but alleges the fact to be that no fraud at any time of any kind was ever practiced on complainant by this answering defendant or any of his codefendants.

Admits that the first note signed by this answering defendant has been paid in full by his codefendant Polk.

Admits that on the 2nd of said notes a payment has been made thereon to the amount of $126.75. As to whether or not there is still due on said notes the sum of $1,873.15, together with interest on $1,000 thereof from the 10th day of December, 1885, and on $873.15 thereof from March 10th, 1887, at the rate of 7% per annum,
58 this answering defendant has not sufficient information upon which to found a belief, and therefore denies the same.

This answering defendant furtyer says that he has no knowledge or information of any of the acts of fraud and false representations charged by the complaint against the defendant- Chapman & Polk or either of them in regard to the matters and things set forth in the bill, but avers that so far as he ever knew or had cause to believe the said Chapman & Polk acted in good faith in all of said matters and for the best interests of the estate represented by the complainant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

BEESON, POLK BROS. & ROOT,
Solicitors for O'Donohoe.

STATE OF NEBRASKA, } ss:
Cass County, }

M. O'Donohoe, being first duly sworn, deposes and says he is one of the defendants in above cause; that he has read over the foregoing answer and that such facts as are therein stated positively are true; that such facts as are stated on information and belief he believes to be true.

M. O'DONOHOE.

59 Subscribed in my presence and sworn to before me this 11 day of June, 1889.

[SEAL.] T. H. POLLOCK,
Notary Public, Cass County, Nebraska.

Upon the back of said answer appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court for dist. of Nebraska. A. H. Robertson, trustee of the estate of Ella V. Davis, deceased, *vs.* S. M. Chapman, M. O'Donohoe, *et al.* Separate answer of O'Donohoe. Filed Jun- 17, 1889. Elmer D. Frank, clerk. Beeson, Polk Bros. & Root, solicitors for O'Donohoe.

Thereupon, afterwards, to wit, on the 5th day of August, 1889, replication was filed in said case; which said replication is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska. In Equity.

ALEXANDER H. ROBERTSON, Trustee,
vs.
SAMUEL M. CHAPMAN *et al.* } No. 257, M.

The Replication of Alexander H. Robertson, Trustee, Plaintiff, to the Answer — M. O'Donohoe, Filed June 17th, 1889, Defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, trav-
60 ersed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

CONGDON, CLARKSON & HUNT,
Solicitors for Plaintiff.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 257, doc. M. U. S. circuit court, district of Nebraska. In equity. Alexander H. Robertson, trustee, *vs.* Sam'l M. Chapman *et al.* Replication. Filed Aug. 5, 1889. Elmer D. Frank, clerk. Congdon, Clarkson & Hunt, solicitors for plaintiff.

Thereupon, afterwards, to wit, on the 12th day of May, 1890, depositions were received, filed, and opened by order of court July 10, 1890; which said depositions are in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee, Complainant,
vs.
SAMUEL M. CHAPMAN *et al.*, Defendants. } 257, M.

Testimony taken before Chas. A. Potter, examiner in chancery of said court, *day* the 19th day of September, A. D. 1889, pursuant to annexed notice and order.

Present: Joseph R. Clarkson, Esq., on behalf of complainant; Geo. W. Covell, Esq., on behalf of respondents.

—— ——, a witness on behalf of the ——, being first duly cautioned and sworn, was examined in chief by Mr. —— ——, — deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. ——.

61 By agreement of the parties the taking of testimony was had at the office of Beeson, Polk Bros. & Root, being resumed in pursuance to adjournment.

SEPTEMBER 19TH, 1889.

L. E. SKINNER, a witness of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposes and says as follows:

Examined by GEORGE W. COVELL:

1 Q. You may state your name, age, place of residence, and occupation.

A. L. E. Skinner; age is 29; Plattsmouth, Cass county, Nebraska; and occupation is real estate.

2 Q. How long have you resided at Plattsmouth and for what length of time have you been engaged in the real-estate business in Plattsmouth?

A. I have resided here since 1879—April, 1879—and the length of time I have been in the real-estate business I cannot hardly tell. It was since 1885, I think, or 1886, or some time along in there.

3 Q. You may state whether or not you have been in the real-estate business and investing and dealing in and examining the title to real estate since the beginning of the year 1885 to the present time.

A. I will not be exactly sure about that. I have been examining titles since before that; yes, sir—I can answer both of the questions, yes.

4 Q. You may state if you knew anything about the values of property in the city of Plattsmouth in September, October, November, and December, 1885, and January, February, March, April, and May, 1886; and, if so, state what your knowledge — of such
62 values, on what it consists, and how you obtained your knowledge thereof.

A. I saw a great many transactions being made and knew some of the prices that were paid—enough so that I can give an approximate idea of the values.

5 Q. Do you know of any sales of real estate being made in the city of Plattsmouth proper in November and December, 1885? And, if so, state what and where they were and the prices at which such real estate was sold, if you remember.

A. I do not remember well enough so that I can satisfactorily answer.

6 Q. Do you know the property which has been known in this community as the real estate belonging to the estate of Ella V. Davis, deceased?

A. Yes; I think so. I know nearly all of it, I guess.

7 Q. State whether or not, in November and December, 1885, you knew the east half of lot — and were acquainted with the value of the east half of lot number ten, in block number twenty-eight, in Plattsmouth City; and, if so, you may state what the value of that property was in the market at that time.

A. Well, I will kind of have to ramble along on that. I recollect the dates mentioned. It was some time along about that time of year that that property was for sale in a bunch. I could not state positively as to that particular piece of land because it was all in a bunch is the way I understood it at that time, and it was thrown on the market and several parties were figuring on buying it.

8 Q. You may give your judgment as real-estate agent and dealer in real estate from the knowledge which you acquired as to the values of real estate in Plattsmouth, as to the market value of that piece of property to which your attention has been specifically directed and at that time?

A. Well, I don't know what the market value would have
63 been. I would not like to have paid myself over $1,300 for the property.

Plaintiff moves to strike out the answer of the witness as irresponsive to the question.

9 Q. What is your best judgment as to the then value of that piece of property?

A. $1,300.00.

10 Q. The property that was known as the Slater property, which, if I remember aright, is the west twenty feet of lot 12, in block twenty-nine, in the city of Plattsmouth property, and on Main street, in said city. What is your best judgment as to the value of that piece of property at the time mentioned, in November and December, 1885, and January, 1886?

A. My best judgment would be that it was worth $1,000.00 at that time.

11 Q. Now I direct your attention to the property that has been known in Plattsmouth as the surveyor general's property—that is, the property that used to belong to Surveyor General Cunningham—which, if I remember rightly, is situated in block two, in the city of Plattsmouth proper, and consists of lots one to six, inclusive, being the north half of the block. You may give your best judgment as to the value of that property, taking into consideration its then situation and its condition in November and December, 1885, and January, 1886.

A. Do you wish the property in detail or it with the improvements that were on it?

12 Q. Yes, sir; with the improvements on it.

A. My best judgment would be $1,000.00.

13 Q. Do you know and did you know then the value of the property that is now known as the Drummond property, and if you then knew the property and its situation and condition you may state what, in your best judgment, was the value of that
64 property, the property being lots one to six, inclusive, in block eighty-nine, in Plattsmouth City proper, and lots one to six, in block eight, in Whit-'s addition to the city of Plattsmouth, in November and December, 1885, and January, 1886?

—. $300.00.

Plaintiff moves to strike out the answer of the witness as irresponsive to the question.

14 Q. What was the value of that property at that time, according to your best judgment?

A. $300.00.

15 Q. You may state whether or not you then knew the value of the south half of block five, in White's addition to the city of Plattsmouth, which is the property now occupied by Milton D. Polk as a residence, in its then situation and condition; and, if so, state what, according to your best judgment, was its value at that time, during the months of November and December, 1885, and December, 1886.

A. Well, I think I knew the property. It is where Mr. Polk now lives, and I think at that time there were two buildings on it; but, if I recollect aright, they were both in very bad condition and hardly rentable. They could not be rented. I am not in a position to judge near as well on that property as on the rest of the pieces of property that have been mentioned, but my best judgment would be $700.00.

Plaintiff moved that the answer of the witness be excluded as irresponsive to the question.

16 Q. What was the value of that property at that time, taking into consideration its then condition?

A. $700.00.

Cross-examination:

17 Q. What was your business before you went into the real-estate business?

65 A. I was deputy clerk.

18 Q. Deputy county clerk?

A. Yes, sir.

19 Q. Did you know of the sale of the east half of lot ten, block twenty, for $1,600.00 cash?

A. No, sir.

20 Q. Did you know of the sale of the west half of block 29?

A. At what date?

21 Q. Along in 1885 or 1886.

A. At what price?

22 Q. Well, I don't put the price. I ask you if you remember of it being sold.

A. I do remember of its being sold.

23 Q. Do you remember what price it sold for?

A. No, sir.

24 Q. Nor to whom it was sold?

A. No, sir.

25 Q. Do you remember of the sale to Mr. Dovey, on Main street, opposite to the east half of lot ten, in block 28—in block 34, I believe it was?

A. Yes, sir; I recollect the sale.

26 Q. Do you remember what that brought?

A. If I ever heard, I do not recollect it. I remember of the lot being sold, but I do not remember the amount.

27 Q. Do you remember the sale by Stadelman's, up at the head of Main street, of the property they owned there and the amount it brought along in 1885 or 1886?

A. If you will name the property I might. Do you mean William or Fred. Stadelman?

28 Q. Fred.

A. I don't recollect the property. I don't know what property he sold.

66 29 Q. The Dovey property is in block 35?

A. I remember the sale of it; is where Dovey's store is now.

30 Q. You don't remember the amount it sold for?

A. No, sir.

31 Q. Do you remember the sale of the west half of lot six, in block thirty-five, in 1885 or 1886?

A. In 1886 I do remember the sale.

32 Q. Do you remember the amount it brought?

A. No; I don't. I am not sure.

33 Q. What occasion had you in 1885 and the early part of 1886 to examine this Davis estate property at all?

A. Well, because it was kind of a matter of common conversation among real-estate men at that time that that property was thrown on the market for sale, and all of them talked about it and wondered who would be the buyer.

34 Q. Did you examine the property with reference to a sale or purchase of it?

A. No, sir; but I heard a great deal of conversation about it.

35 Q. Was there a general desire in the town to buy the property?

A. It seemed not to be, not after the prices were fixed on it, but before that time people talked considerable about it and wondered if they could buy it cheap.

36 Q. Do you know what prices were fixed upon it?

A. I don't.

37 Q. Do you know who fixed the prices?

A. I believe the gentleman that was here—his name was Robertson.

38 Q. Did you see him?

A. I saw him; yes, sir.

39 Q. Did you have a talk with him?

A. No, sir.

40 Q. How do you know he fixed the price, then?

A. I don't, but it is my belief.

67 41 Q. Did you know of the sale of lot 3, in block 93, by Bennett to Belle Emery in May, 1886?

A. I don't recollect the circumstances at all.

42 Q. Do you remember the sale of lots one and two, in block 3, in the city, by John Fitzgerald to George F. Houseworth, August 25th, 1884?

A. Yes, sir.

43 Q. Do you remember what the price was?

A. I could not state it exactly.

44 Q. Did you know at the time that sale was made what the price was?

A. Yes, sir; I had something to do with drawing the papers.

45 Q. Do you know whether you thought that price was high or low?

A. I could not say what I thought.

46 Q. In your judgment was property worth more in the fall of 1885 than in the fall of 1884?

A. That is a pretty hard question. In the fall of 1885 there was but very little property moving in town here.

47 Q. What is your idea as to the comparative value?

A. It was not as much in 1884. I don't think the prices were quite so much.

48 Q. Taking the spring, say as late as May and June, 1886, how would the values of real estate in Plattsmouth compare with the values in the early part of 1885 and the fall of 1885?

A. Well, nearly the same; the prices were a little bit higher.

49 Q. Do you remember the sale of lot four, block ninety-four, by John Dovey *et al.* to Neff, of date January 25th, 1886?

A. Yes, sir; I recollect of the circumstance of the property being bought.

50 Q. Do you remember the price?

A. I don't.

68 51 Q. Did you have a knowledge at the time of the price?
A. At the time I believe I did.
52 Q. Did you consider it high or low at the time?
A. I could not say.
53 Q. Do you remember the sale of lot seven, block three, by Jane A. Dovey *et al.* to Horace N. Dovey, April 10, 1885?
A. I don't believe that I do.
54 Q. Do you remember the price?
A. No, sir.
55 Q. Did you know the price at the time?
A. No, sir; I don't recollect now the circumstance of the sale.
56 Q. You do not remember whether you considered the price fair or too high or too low?
A. I do not know the price.
57 Q. Do you remember when you left the county clerk's office?
A. I don't, but I think it was in 1885 or 1886.
58 Q. Was it the spring of 1886?
A. I don't know, but it could not be the spring because it was close after the change of officers; it was in the winter.
59 Q. It was in the winter of 1886?
A. Yes, sir; it might have been the early part of the winter of 1886.
60 Q. And up to the time you left the county clerk's office you were not in the real-estate business?
A. Yes, sir.
61 Q. You carried on that business while you was in there?
A. No, sir; not the real-estate business, but the examination of titles.
62 Q. Do you remember of the sale and purchase of the west half of lot twelve, in block twenty-eight, in 1885 or 1886?
A. Yes, sir.
69 63 Q. Do you remember the price paid?
A. I don't.
64 Q. Did you know it at the time of the sale?
A. Yes, sir. I could not say that I did at the time, but I did after that.
65 Q. Do you remember whether you considered the price high or low?
A. I could not answer that question in any way intelligently. Under some of the conditions it might have been, and it might have been the other way.

Redirect examination.

By Mr. COVELL:

66 Q. State where block thirty-five is situated with reference to block 28, in Plattsmouth.
A. Which block do you mean?
67 Q. I mean the lot to which your attention has been called as having been sold according to the statement made in the question to Dovey. I think it is lot six, in block 35. Lots 5 and 6 have both

been mentioned to you. Where are they situated with reference to the lot to which your attention has been directed in block twenty-eight?

A. They are situated on the south side of the street from the lot.

68 Q. Of what street?

A. Main street.

69 Q. Do you know the situation of lot 3, in block 93, to which your attention has been directed, and, if you do know, where is it situated with reference to any property that formerly belonged to the estate of Ella V. Davis, deceased?

A. Well, I know the situation of the lot and right where it is situated, but I don't understand your question.

70 Q. In what direction is that lot from the property known as the surveyor general's property?

A. It is somewhat north and a little east of it, I think. It
70 may be directly north.

71 Q. How many blocks away from the surveyors general's property?

A. It is in the next block north.

72 Q. This Emery property is in the next block north of the surveyor general's property, is it?

A. I think so.

73 Q. If you know, where is the property to which your attention has been called as having been sold by John Fitzgerald to George F. Houseworth in August, 1884, situated with reference to the surveyor general's property or the property known as the surveyor general's property? The property sold to Houseworth by Fitzgerald is described as lots one and two, in block three, in Plattsmouth, and the surveyor general's is in block two, in Plattsmouth.

A. I can describe the property, but I cannot tell just the location.

74 Q. Which way is — situated from the surveyor general's property?

A. It is west one block.

75 Q. Lot four, in block ninety-four, to which your attention has been called as having been sold to one Neff on January 25, 1886, in what direction is that from the surveyor general's property and how far from it?

A. That property is two blocks south and one block west.

76 Q. In what condition, if you know, and what was its situation with reference to improvements of lot 4, in block 94, in January, 1886?

A. I don't think there were any improvements at that time. The lot was very well situated.

77 Q. Was it better or worse than the property known as the surveyor general's property, or any part of it?

A. In my judgment it was better.

78 Q. You may state whether or not this lot 4, in block 94, was adjoining the residence of Neff or was adjoining the lot upon which he resided at that time, if you know.

71 A. I don't know.

79 Q. Your attention has been directed to lot 7, in block

3, as having been sold by John Dovey and others to Horace N. Dovey April 10, 1885. If you know the condition of that lot with reference to improvements and situation you may state what they were in comparison with the lots known as the surveyor general's property.

A. The improvements—I don't think there were any. The situation was better than the property known as the surveyor general's office.

80 Q. Your attention has been directed to the sale and purchase of the west half of lot 12, in block 28, some time in February or March, 1886. You may state, if you know, what the situation of that lot was with reference to improvements and its condition as to improvements at the time when it was purchased.

A. The improvements were a one-story building, I think, at the time, but I would not be positive. I think it was a one-story building, nearly new.

81 Q. Of what material was it constructed?

A. The greater portion of brick, I guess.

82 Q. Compare that property—the west half of lot 12, in block 28—with the east half of lot 10, in block 28, in the city of Plattsmouth, and state which was of the greater value, taking into consideration the condition and situation of each during the two months of November and December, 1885, and January, February, and March, 1886.

A. And taking into consideration the nature of the improvements?

83 Q. Yes, sir; everything.

A. The west half of lot 12, in my judgment.

84 Q. The question was asked you on direct examination as to the time when you left the county clerk's office and went into the real-estate business, and, if I remember rightly, your answer was during the winter of 1886. What do you mean by that, in the winter
72 of 1885-'6 or 1886-'7?

A. In January, 1886.

85 Q. Then the election of which you mention in your answer to that question took place in the fall of 1885?

A. I suppose so.

86 Q. And you left the county clerk's office as deputy in January, 1886?

A. Yes, sir.

87 Q. According to your best recollection, when did the talk of which you say you heard among real-estate men and other residents of Plattsmouth concerning the sale of the property of the Ella V. Davis estate take place?

A. I could not be positive, but it was some time in the latter part of the summer of 1885 and in the fall.

88 Q. Was it before or after the election took place?

A. I don't know. I was flustrated by the election; to the best of my recollection it took place before the election—some time before November.

89 Q. You may state, if you know, what was the occasion of such

talk and conversation among the people residing here in Plattsmouth. What caused the conversations that took place, if you know?

A. That was a good deal of property for one person or estate to be holding in a body in this place at that time, and they looked at it as a matter of surprise when they found out who owned it; a great many of the people did not know who owned the property, and when the agent came here I expect they were all trying to get around and see how cheap they could get it.

90 Q. Was that property in demand at that time?

A. No, sir; to my judgment it was not. I know several persons talked around about buying it, but they did not seem to buy it.

91 Q. If not, why not?

73 Plaintiff objects as calling for the conclusion of the witness and not for expert testimony.

A. Well, my belief is that a great many of them thought it was too high and that too much money was asked for it.

Recross-examination.

By Mr. CLARKSON:

92 Q. What men, if you remember, talked about buying the property and the price of it?

A. The price of it, as far as it was concerned, I recollect of Mr. Jennings talking about it, and Mr. Brown talked about it.

93 Q. What Brown?

A. W. L. Brown and C. H. Parmalee, and I think I heard Mr. Newell—W. H. Newell—talk about it. Mr. Parmalee, I recollect, was around several times, and we all expected and talked that he would b-y the property.

(Excused.)

It is agreed and stipulated by and between the parties hereto that the witness- examined at this hearing shall be sworn by a notary public, and that such oath shall have the same effect as if administered by a special master, and that the signature- of the said witnesses to the depositions shall be waived, and that the witness L. E. Skinner shall be entitled to receive the usual witness fees, and the same shall be taxed as a part of the costs in the case.

MILTON D. POLK, a witness of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and sayeth as follows:

Examined by G. W. COVELL:

94 Q. Give to the reporter your name, age, place of residence, and occupation.

A. 32 years; Milton D. Polk; I reside in the city of Plattsmouth, and my occupation is that of an attorney-at-law.

74 95 Q. State if you are one of the defendants in this cause.

A. I am.

96 Q. How long have you resided in Plattsmouth, Cass county, Nebraska?

A. I have resided in this county about 19 years and in this city about 7 years, I think.

97 Q. Do you know the property belonging to the estate of Ella V. Davis, deceased; and, if so, how long have you known that property?

A. Yes, sir; I know the property, and I have known that property since the fall of 1885.

98 Q. You may state if you are acquainted with the plaintiff in this action, Alexander H. Robertson, trustee of the estate of Ella V. Davis, deceased, and, if so, when you first met him and became acquainted with him.

A. Yes, sir; I am. I met him in the fall of 1885 in Plattsmouth.

99 Q. About what time did you meet him in Plattsmouth in the fall of 1885?

A. Well, trusting to my memory, I cannot tell what month it was.

100 Q. Are there any papers from which you can refresh your memory; and, if so, what was the date?

A. It was some time in September, 1885, about the 5th of September.

101 Q. How do you know that is the date at which you met Robertson first in Plattsmouth?

A. One way I fix it is the fact of his signing a paper on that day.

102 Q. What paper?

A. A stipulation.

103 Q. In what case?

A. The estate of Ella V. Davis against Thomas W. Shrock.

104 Q. Did you see him sign that paper?

A. I think I did.

75 105 Q. What makes you certain that he signed it on the 5th day of September, 1885?

Plaintiff objects as leading and suggests to the witness the answer.

A. I notice in my own handwriting the date September 5th, and under the signature I notice also it was filed September 5th, 1885.

106 Q. In whose handwriting is the filing of the paper?

A. In the handwriting of the county clerk, W. C. Showalter.

107 Q. You may state where it was and in whose presence it was, if you know, that Mr. Robertson signed that stipulation that you have identified.

A. It was right here in this office or else it was in the office of the district clerk. I cannot remember which.

108 Q. State whether or not that was signed in your presence.

A. Yes, sir, and Mr. Chapman was present also.

109 Q. Have you in your hands now the stipulation which you say was signed by Alexander H. Robertson?

A. I have.

110 Q. Is that the paper?

A. Yes, sir.

111 Q. You may state if you saw W. C. Showalter enter the filing upon that paper after Mr. Robertson signed it.

A. My judgment is that I did. I cannot swear positively, but I am positive it is Showalter's handwriting.

112 Q. At what date does it appear to be filed in his handwriting?

A. September 5th, 1885.

113 Q. Is this the stipulation to which you have reference in your testimony?

A. Yes, sir.

Defendant offers in evidence the paper referred to by the witness as the stipulation; same marked Exhibit "A," and a
76 copy thereof hereto attached. The endorsements and filing thereon are also offered in evidence.

114 Q. How long was Mr. Robertson here in Plattsmouth, Cass county, Nebraska, at the time when he visited this city?

A. I am not sure whether he was here more than one day or not; a day or two.

115 Q. You may state whether or not you met Mr. Robertson and saw him in this office where we are now taking this testimony at the time when he visited Plattsmouth and at the time when and on the day on which this stipulation to which you have referred in your testimony and which has been introduced in evidence here was signed.

A. I met him here about the office somewhere, I think; yes, sir.

116 Q. What, if any, conversation took place between you and Mr. Robertson respecting the property of the estate of Ella V. Davis, deceased, at the time when you met him here, and in whose presence did such conversation, if any, occurred? State all the facts in relation to that.

A. Well, up to the time he came here I had never heard Mr. Chapman say anything about this property, and I did not know anything about it. I was living in another part of the town, and I did not know anything about it till I heard he and Mr. Chapman talk about it.

117 Q. Heard who?

A. Mr. Robertson and Mr. Chapman talked something about the property and Mr. Chapman took Mr. Robertson out to some real-estate men. He wa- talking about selling it, etc. I had very little conversation with Mr. Robertson myself.

118 Q. What did Mr. Robertson say about the property—what he wanted to do with the property, if anything—in your presence and in the presence of anybody else whom you may remember was present when such talk was had, if any such talk was had?

77 A. He was very anxious to sell the property. He was very anxious to sell the property, and he was anxious to fix a value upon it and to know what it was worth, etc.

119 Q. What did you hear Mr. Robertson say to Mr. Chapman respecting this property as to the value of the property, and what,

if anything, did he inquire as to the condition and situation and value of the property?

A. Well, I think at the time the taxes had piled up against the property to an amount of over $500.00. It was very clear and seemed to be very clear to Mr. Robertson that the property ought to be improved, and it would take considerable money to put it into shape whereby it would bring in an income. That was the current of his talk with Mr. Chapman that the estate could not afford to put the money into the property so that it would bring in an income, and he wanted to sell it, and they went out and had a talk with the real-estate men, and they talked in our office about the conversations they had had with the real-estate men and the values they had placed on the property, which was all the way from $3,500 to $4,000.

120 Q. What did you hear Mr. Robertson ask Mr. Chapman as to the value of the several pieces of property and the value of the property as a whole, and what was Mr. Chapman's reply, if you heard him make any?

A. Well, Mr. Chapman made reply that he would take him to men who were dealing in real estate and they could value it; that we were not dealing in real estate, and so they went out and came back and they talked about the value being $4,000.00—being the price—and Mr. Robertson wanted to sell it to Mr. Chapman for $4,000, and Mr. Chapman did not seem disposed to buy it or he could not buy it, I believe.

121 Q. In answer to what questions, if any, if you remember, was it that Mr. Chapman told Mr. Robertson what you have just now said?

78 *122 Q.* I don't know as I can answer that, any more than Mr. Robertson wanted to know what the property was worth.

— Q. What was the substance and purport of his inquiry, if you know, of Mr. Chapman with respect to this property?

A. He inquired of him as to its conditions; I don't know as he inquired much as to its condition, because he went around and looked at it; Judge Chapman took him around.

123 Q. The conversations which you have referred to as occurring between Mr. Chapman and Mr. Robertson in your presence took place when—before or after Mr. Robertson had been around with Mr. Chapman examining the property?

A. When he wanted to sell to Mr. Chapman it was afterwards; I had reference to both conversations in my testimony, but when he wanted to sell and had fixed the prices was afterwards.

124 Q. Did you go with them or either of them to see and talk with the real-estate men and citizens of Plattsmouth?

A. I did not, because I never had anything to do with the Davis matter; I had never seen the property at that time.

125 Q. You may state if you were present in Omaha and heard the testimony of C. H. Parmalee taken on behalf of the plaintiff in this cause.

A. Yes, sir; I heard Mr. Parmalee's testimony.

126 Q. In answer to question No. 162 of the testimony taken on

behalf of the plaintiff, Mr. Parmalee testified as follows: "He sent for me to come to his office and told me that he was agent for the property to sell it; it was known then as the Early estate; we knew it as that being the property, the lots you have named over; I think there are 18 lots of them and two half lots on Main street; those are residence lots where Mr. Polk lives, but where the surveyor general's property is and where Drummond's building stands, what he asked me first was what I would give for it; he sent
79 somebody out on the street and hunted me up and I thought a minute and said, I will give $3,500, but I said I do not known that I want to make any investment; he then asked me if I would give $4,000 for it and divide the profits with him; he said he would advise the sale of it to this agent or whoever it was, and Mr. Robertson, if that is the person, he would advise him to sell it at $4,000 if I would take it and divide the profits with him, what I made out of him," referring to you as being the party who sent out and brought him in the office and had a talk with him. Now you may state whether or not you made any such proposition to Mr. Parmalee; state all the facts in relatio- to any conversation that you had with regard to this property with him, the property belonging to the Ella V. Davis estate at that time, if you had any conversation with him.

A. That statement of Mr. Parmalee's is false in every particular. I never sent after him, and I never — any such a conversation with him. I never pretended that I had the authority to advise this man Robertson, and I never thought of it. I had nothing to do with the sale of the Davis estate, especially at the time when I had only met Mr. Robertson.

227 Q. You may state whether or not you, in any conversation you had with Mr. Parmalee, asked him if he would give $-,000 for the property and divide the profits with you.

A. No, sir. I never made any such a statement to Mr. Parmalee.

128 Q. You may state whether or not you said to Mr. Parmalee, in any conversation you had with him respecting the Davis estate, that you would advise the sale of it to Mr. Robertson at $4,000 if he, Mr Parmalee, would take it and divide the profits with you that might be made out of the sale of the property.

A. No, sir. I never made such a statement to him. I heard——

Defendant objects to hearsay testimony.

A. I say the statement of Parmalee is false.

80 129 Q. What, if any, conversation did you have with him?

A. I never had any with him, to the best of my recollection. I don't remember of having any conversation with him.

130 Q. What, if anything, did you hear Mr. Parmalee say to anybody in your presence? And, if you heard him say anything to anybody respecting the value of this property and the purchase of it, state what it was.

A. I did not hear him say, but I heard Mr. Chapman and Mr. Robertson say that he placed $3,500 as the valuation of the prop-

erty, and said it was not worth over that, and that he would not pay over that for it.

131 Q. You may state whether or not on the day on which Mr. Robertson was in Plattsmouth examining the property in controversy in this action you had any conversation with Mr. Parmalee as to his purchase of this property.

A. I had none whatever—no conversation whatever—with him in reference to this Davis estate.

132 Q. You may state whether or not you, at any other time after the day on which Mr. Robertson was present here in Plattsmouth and was talking with Mr. Chapman with reference to the value of this property and the sale or disposition of it, *you* had any conversation such as Mr. Parmalee has testified to on behalf of the plaintiff here in regard to this property in controversy.

A. No, sir; I had not.

133 Q. Did you ever at any time or place have any such conversation with Mr. Parmalee as he has testified to?

A. No, sir.

134 Q. Did you at any time or at any place say to Mr. Parmalee that you would advise Mr. Robertson to sell the property in controversy at the price and sum of four thousand dollars if he, Mr. Parmalee, would purchase it at that time and divide with you the profits that might be made out of the sale of it?

81 A. No, sir; I never did. Mr. Parmalee said it was not worth over $3,500.

135 Q. How do you — that?

A. Mr. Chapman and Mr. Robertson said in their conversation that that was the value he placed on it.

136 Q. State whether or not Mr. Parmalee was in the office here in which we are taking testimony on the day on which Mr. Robertson was here in Plattsmouth.

A. I am not sure about that, but I think not. I don't think they called any real-estate men in here; I think they went around and saw them; I did not see him in the office.

137 Q. Do you recollect of seeing him and talking with him in the office that day—Mr. Parmalee, I mean?

A. No, sir.

138 Q. In answer to question 171, following the previous question No. 170, Mr. Parmalee testified on behalf of the plaintiff in this case as follows, in answer to question 170, which reads: "At the time of this talk that you had with Mr. Polk in his office, was any one else present?"

Answer. "When I first went into the office there was."

Question. "Who was it?"

Answer. "I do not know; it was somebody that came out after me on the street, and I went up with that somebody and went into the office; it seems to me that it was Mr. Root, but I am not sure; anyway, the person went out and Mr. Polk got up and shut the door; there is two rooms for the office." You may state whether or not any such occurrence as that took place as testified to by Mr. Parmalee at this office here on that day.

A. No, sir; no such occurrence took place. We had no one with us in the office at that time, and Mr. Root did not come into the office until two years after that. I was the man that did the running around myself.

82 139 Q. In answer to question No. 172, "And then you and Mr. Polk were closeted together?" Mr. Parmalee answered, "Yes, sir; Mr. Chapman was there when I first went in." State whether or not Mr. Parmalee was here that day in the office with you and in the office when Mr. Chapman was here.

A. No, sir; he was not in the office with me that day.

140 Q. In answer to several questions following question No. 172, Mr. Parmalee stated in his testimony-in-chief taken on behalf of the plaintiff that "we," mentioning Mr. Polk and Mr. Chapman, "talked about it twice," once after the first time and this once after the first time was in this same office, and the conversation was in substance the same as the first conversation. You may state whether or not you had any conversation with Mr. Parmalee in this office at any — in substance and in effect such as related in his testimony as having occurred as that first conversation in this office.

A. No, sir; we had no such conversation here nor anywhere else.

141 Q. You may state whether or not before Mr. Robertson came to Plattsmouth to see this property in controversy that you told Mr. Parmalee that Mr. Robertson was to be here to see the property and that you would advise the sale of the property at $4,000 or any sum whatever.

A. No, sir; before Mr. Robertson landed in Plattsmouth that day I don't think I ever had heard of the Davis estate; I lived in another part of the town and did not know anything about it at all.

142 Q. What, if anything, did Mr. Robertson say in your presence, after having examined the property in controversy, to you and to Mr. Chapman, as to the sale of the property in controversy for him as trustee of the Ella V. Davis estate?

A. He said it was very clear to him that the property should be disposed of. It was tumbling down and the buildings were in bad condition and the rent was not paying the taxes and the taxes were piling up and would eventually take the property.

83 143 Q. What value, if any, did he place upon the property himself after having examined it and made inquiries about it?

A. He placed $4,000.00 as the valuation upon it after having inquired about town, and he seemed to think that was all it could be sold for.

144 Q. What are the relations existing between C. H. Parmalee and you?

A. They are not very pleasant and have not been for some time.

145 Q. Why?

A. Well, I have known him as a sort of usurious hypocrit- down here and I have not hesitated to say what I thought about him.

146 Q. State whether or not he has shown himself to be an enemy of yours for a good many years.

A. Yes, sir.

147 Q. In what way?

A. In numerous business ways. He is one of the men that is at the bottom of this conspiracy here to try to rob me and put me to great trouble and expense, and he has been decided in looking up testimony.

148 Q. Do you know of anything that took place between Mr. Robertson and any of the parties of whom he made inquiries respecting the condition and value of the property in controversy? And, if so, state what took place and with and between what parties such inquiry was made by Mr. Robertson.

A. I was not present with Mr. Robertson and Mr. Chapman. They left the office and went around town and to find out in relation to the values, and I knew nothing about it except what Mr. Robertson and Mr. Chapman said in my presence.

149 Q. What did they say in your presence respecting the inquiries made about the value of the property?

A. They said particularly that Mr. Parmalee said the
84 property was not worth over $3,500, and he did not know that he would give that for it.

150 Q. Did they state that they had just had a conversation with Mr. Parmalee about the property?

A. Yes, sir.

151 Q. With what other persons did they say they had made inquiries at that time?

A. I think Dr. Black, W. S. Wise, Mr. Windham, and John W. Barnes, and perhaps others.

152 Q. What, if anything, was said by Mr. Robertson and Mr. Chapman and you when you were here in the office together about obtaining a decree from the district court authorizing him as trustee to make a sale of the property in controversy?

A. Well, they talked considerably about that, and Mr. Robertson said he thought it would be best to have a decree, and he asked Judge Chapman's judgment about that, and Mr. Chapman seemed to have a copy of the will in the safe, I think. At any rate, a copy of the will was produced, and I think Mr. Chapman got it out of the safe. I never saw it before, and he read it over to Mr. Robertson and told Mr. Robertson it was very clear to him it would not be necessary to get a decree, but he would look the matter up. He said, on the spur of the moment, that he would say a decree was not necessary, but he would look the matter up very carefully, and if a decree was necessary he would get it.

153 Q. What did Mr. Robertson say in answer to that opinion of Mr. Chapman with respect to the necessity for having a decree obtained?

A. He did not insist upon it particularly more than it was his judgment, but he said if it was not necessary it was all right.

154 Q. What, if any, bargain or agreement was made between you and Mr. Chapman and Mr. Robertson as to fees or compensation for any services that might be rendered by you and Mr. Chap-

man in respect to the property in controversy and the sale
85 of it or whatever might be done about it?

A. There was not much said about the fee matter. It was broached by Mr. Robertson shortly before he went away. We had left the office, and I don't know whether Mr. Chapman was present or not when the matter was brought up, but we were talking about getting a decree and fixing up this Shryock matter and what it would be worth, and I thought it ought to be worth a couple of hundred dollars, and he says, "Well, just charge $400 and I will take half of it. I am to a good deal of trouble and expense coming out here, and it will be all right;" and he says, "Our court is very parsimonious or very close, and it is very difficult to get an allowance for services."

155 Q. What do you mean by referring to the Shryock matter?

A. That was a foreclosure procedure that was then under our supervision.

156 Q. A foreclosure in whose favor?

A. In favor of the Davis estate.

157 Q. Who had been conducting that business?

A. Mr. Chapman personally.

158 Q. Had the foreclosure been accomplished of the Shryock matter, the mortgage upon the property by the Davis estate, when Mr. Robertson was here?

A. No; I don't know just how far along it was. I don't know but maybe a decree had been obtained, but nothing further.

159 Q. You may state now for what services to be rendered by you and Mr. Chapman you were to receive, you and Mr. Chapman were to receive, the sum of $200.

A. It was for this foreclosure of the Shryock matter and whatever we might do in the license matter.

160 Q. When Mr. Robertson was here did he have with him the names of the heirs of the estate?

86 A. No, sir; I think it was not mentioned; that we did not think to inquire.

161 Q. What was done, if anything, in respect to making an application for a decree after Mr. Robertson was here?

A. Mr. Chapman drew up a petition and left it blank for the names of the heirs, and I wrote down to Mr. Robertson for the names to have them placed in the petition and that they might appear in the decree, and so forth, and he sent them.

162 Q. When did he send them to you?

A. Well, my letter referring to the copy was written about January 22nd.

163 Q. Of what year?

A. 1886, and I saw that the names were put in the papers, and the papers were filed February 4th, so I presume that Mr. Robertson sent me the names some time the latter part of January or the first of February.

164 Q. Of what year?

A. 1886.

165 Q. After you received the names of the heirs of the estate was

there anything done in any way, shape, or manner in the court looking toward the obtaining of a decree or license for the sale of the property by Alexander H. Robertson as trustee of the estate?

A. Really I don't know much about it after I had written him and got those names that Mr. Chapman wanted me to get. He has always attended to that in person and I gave the matter no attention whatever further.

166 Q. Have you anywhere in the office the petition that was drawn for that purpose?

A. I have.

167 Q. Where is it?

A. I have it here. (Hands paper to Mr. Covell.)

168 Q. What was done with respect to that, if anything?

87 A. The petition was filed February 4th.

169 Q. Of what year?

A. 1886.

170 Q. Why was a petition filed February 4th, 1886, asking for a license for Mr. Robertson to sell this real estate?

A. It seems that was done because Mr. Robertson requested that it should be done.

171 Q. Why was it not prosecuted to a final conclusion?

A. Mr. Chapman, when he looked the matter over thoroughly, came to the conclusion it was not necessary at all and did not secure it.

172 Q. Now, state whether or not the proceeding was withdrawn, and, if so, why.

A. It was afterwards withdrawn for that reason.

173 Q. For what reason?

A. Because it was considered it was not necessary to obtain a license.

174 Q. Is that paper you have in your hand the petition in that proceeding?

A. Yes, sir.

Defendants offer in evidence the petition as identified by the witness. No objection was made by the plaintiff to its introduction. Copy of said petition is hereto attached, marked Exhibit "B."

175 Q. Are you acquainted with Perry Walker, whose testimony was taken on behalf of the plaintiff?

A. I am.

176 Q. Were you present when the testimony of Perry Walker was taken here in Plattsmouth?

A. I was.

177 Q. State what, if anything, took place and occurred between you and Perry Walker in any conversation you may have

88 had with him respecting the property that belonged to the estate of Ella V. Davis, deceased. State all the facts in relation thereto.

A. I saw Perry Walker in regard to the sale of this property and his buying it. I asked him if we could not buy it together, and Mr. Robertson wanted to sell it very much, as Mr. Walker testifies to.

He is mistaken about the value that we talked about. I am very confident that value was $4,000 that we talked about, and Mr. Walker told me that he was paying interest at that time on borrowed money at the bank, and because he was paying interest on borrowed money he could — buy at that time, but he thought the property ought to sell for that money; that the property ought to sell readily for that money, and, after he did not want it, I went ahead. I don't remember to have seen Perry Walker but the one time.

178 Q. Did you make any proposition to Perry Walker to the effect that if he would furnish the money and purchase the property at $4,000 that you would cause it to be sold to him at that price, provided he would divide with you the profits that might be made for a sale of the property?

A. No; I did not. My understanding was that that property could be bought by any one who was willing to pay $4,000 for it, and I did not have the money to buy it, and I thought Walker would like to buy it if he had the money to pay for the property.

179 Q. Was that all that took place between you and Mr. Walker with respect to this property?

A. That is all I call to mind now.

180 Q. You may state if you informed Mr. Robertson at any time after he was here and after the sale by him to Mr. O'Donahoe that you had purchased the property of O'Donahoe, or traded him out of the property, and, if so, when you so informed him.

A. I can only tell by referring to a copy of a letter when I informed him. It was some time in the spring of 1886.

89 181 Q. Refresh your memory, if you can in any way or manner, and state what date it was you so informed him.

A. I informed him on the first day of May, 1886.

182 Q. How do you know the date upon which you informed him?

A. I have a copy of the letter which I wrote to him on that day.

183 Q. What kind of a copy?

A. A letter-press copy.

184 Q. Who made that letter-press copy?

A. I think I did it myself.

185 Q. Have you the letter-press copy of the letter which you wrote to him on that day?

A. No, sir; only a portion of it.

186 Q. Have you a letter-press copy of all of that portion of the letter referring to the estate?

A. Yes, sir; I have all of that part referring to this estate.

187 Q. Is that it which you have in your hand?

A. Yes, sir.

188 Q. Is that letter-press copy of a letter written by you in your handwriting to Mr. Robertson?

A. It is.

189 Q. Is that all of it that you have?

A. Yes, sir.

190 Q. What has become of the other part of it?

A. It has become mislaid. I have made diligent search for it and have been unable to find it.

Defendants offer in evidence that portion of the — date May 1st, 1886, to which reference has been made by Mr. Polk in his testimony. A copy of the said letter is hereto attached, marked Exhibit "C."

Plaintiff objects for the reason it purports to be only a por-
90 tion of the letter written at that time and calls for the whole letter or none of it.

Defendant- offers in evidence a letter signed by Alexander H. Robertson, of date Nov. 17th, 1885, and identified as Exhibit No. 27 on August 16th, 1889, by C. A. Potter, examiner in chancery, and addressed to Chapman & Polk. A copy of said letter is hereto attached, marked Exhibit "D." The plaintiff made no objection to its introduction into evidence.

Defendant- offers in evidence a letter addressed to Polk & Chapman, dated Baltimore, December 17th, 1885, and signed A. H. Robertson, and identified on the 16th day of August, 1889, as Exhibit 28 by C. A. Potter, examiner in chancery. A copy of said letter is hereto attached, marked Exhibit "E." No objection was made by the plaintiff to its introduction into evidence.

Defendant- offers in evidence a letter addressed to Milton D. Polk, dated February 9th, 1886, and signed Alexander H. Robertson, trustee of the estate of Ella V. Davis. Copy of said letter is hereto attached, marked Exhibit "F." No objection was made by the plaintiff to its introduction into evidence. Said letter was identified by C. A. Potter, examiner in chancery, August, 1889, as Exhibit 28.

Defendant- offers in evidence a letter addressed to M. D. Polk, Esq., and signed by A. H. Robertson, of date February 15, 1887, and identified on August 16, 1889, as Exhibit 29 by C. A. Potter, examiner in chancery, together with the envelope in which was contained the said letter, and identified by C. A. Potter, examiner in chancery, on said day as Exhibit 30. A copy of said letter and envelope is hereto attached, marked Exhibits "G" and "H" respectively.

191 Q. Have you dealt in real estate in Plattsmouth outside of the real estate in controversy to any extent; and, if so, how long have you been dealing in real estate in Plattsmouth and its additions?

A. I have had some little dealings and I have been famil-
91 iar with real-estate values in the town for the last six or seven years.

192 Q. Are you acquainted with the values of real estate in the city of Plattsmouth and its additions as they were in 1884, 1885, and 1886?

A. I think I was somewhat familiar with the values at that time.

193 Q. What is the extent of your knowledge as to the values of real estate during those years in Plattsmouth and its additions?

A. I don't know hardly how to answer that question as to the extent of my knowledge—nothing more than I did know some-

thing about some of the transfers and about what people held property at and the values of property that were held.

194 Q. You may state, if you know, what the value was during the years of 1884, 1885, and 1886 of the 20 feet off of the west side of lot 12, block 29, in the city of Plattsmouth.

A. It was worth from 8 to 10 hundred dollars.

195 Q. In what way do you fix the value of this real estate upon the market during those years?

A. Well, it is difficult to fix the value of any property at that time, because the number of sales were very few, and where a sale would be made it would be made to a party who owned the adjoining lot, and he would give more for the property than was its actual value.

196 Q. Where is this piece of property located with reference to Main street, in Plattsmouth—how far west of the B. & M. depot?

A. It is located on the north side of Main street, and it is two blocks west of the B. & M. depot.

197 Q. You may state whether that is a full business lot or not.

A. It is not; in fact, it is two feet short of it, and, it being a twenty-foot lot, it would be very narrow for a brick business room.

198 Q. You may state whether or not there was any improvements upon that property.

92 A. There was a shell of a frame building on the lot that was renting for ten dollars a month.

199 Q. What is the length of the lot north and south?

A. One hundred and forty feet, I think.

200 Q. You may state, if you know, what the market value was, during the years I have mentioned, 1884, 1885, and 1886, and up till the first of May, 1886, of lots one to six, inclusive, in block two, in the city of Plattsmouth, and known as the surveyor general's property.

A. That was worth $1,000, or probably a little more.

201 Q. Upon what do you fix the market value of that property at that time?

A. Well, it is very difficult to fix the market value of that property at that time for the reason it is fixed more by the way people were holding their property at.

202 Q. Was there any property sold in that vicinity at or about that time?

A. There was none sold in that immediate vicinity, but George Houseworth bought of Mr. Fitzgerald some time before that. We had a boom here in town some time in 1879 or somewheres along there, after the completion of the B. & M. bridge, when property was active, and then it began to drop down in 1883. It was very dull in 1883, 1884, and 1885, and it appeared to be as low in 1885 and the fore part of 1886 as it has ever been in this town.

203 Q. You may state, if you know, what the market value was of lots one to six, inclusive, in block 89, in Plattsmouth, during the year 1885 and the fore part of 1886, and state what the size of the lots was, if you know, and give the market value thereof, if you know.

A. The lots in block 89 are fractional; in block 8, White's addition, are fractional, and block 89 is fractional. The lots were not worth much of anything, because one end was under a hill and the other end had no street frontage. They would not probably be worth over $25 apiece.

93 204 Q. What was the size of those fractional lots in block 39?

A. I think they were forty-four feet wide, and I think about either fifty or sixty feet in length.

205 Q. Where did lots one to *six*, inclusive, in block 8, White's addition, lie with reference to the fractional lots in block 89 of the city?

A. They abutted right onto the end of those lots.

206 Q. Are those lots fractional in block 8, White's addition?

A. Yes, sir.

207 Q. What is the size of those lots?

A. They are forty-four feet and the others are 60 feet, and these are 80 feet in length.

208 Q. Then all the lots in block 89, in Plattsmouth, and all the lots in block eight, White's addition, put together, abutting up against each other, make six full lots?

A. Yes, sir.

209 Q. And that only?

A. Yes, sir.

210 Q. Was there any improvement in 1885 and 1886 upon the lots last mentioned, those in block 89 and in block 8, White's addition?

A. No, sir.

211 Q. Were they fenced or not?

A. No, sir.

212 Q. What was their location and condition with reference to their being level or otherwise?

A. They are rolling, but they are fair lots. They are up high, so when the streets are graded they will be up very high.

213 Q. State, if you know, what the value of those fractional lots was during the year 1885 and the early part of 1886 in the market, taking each half separately and the whole of them together.

A. Taking the whole of them together, they were worth

94 probably $400.

214 Q. Do you know the size of the lots in the south half of block five, White's addition to the city of Plattsmouth; and, if so, what is the size of those lots?

A. I am not positive in regard to the size of those lots, but I think only 44 by 144 feet.

215 Q. What was their condition as to being rough or level?

A. Those lots are very rough. There is one smooth lot on which two shanties were situated at the time I bought the property, and from that it goes right down very abruptly.

216 Q. What kind of improvements, if any, were situated upon those lots in the fall of 1885?

A. There was two buildings there, but the shingles had rotted so

that the rain went through the roof for so long that the plastering had come off and the weatherboarding was badly rotted and the sills were partially rotted. On the east side they were entirely rotted and the foundation had badly tumbled out and there was danger of them tumbling off. The window sashes were badly rotted and two doors were off of their hinges and the doors that were there were badly cracked. They were badly delapidated. I never saw two worse cottages standing.

217 Q. Had those buildings any rental value at that time?

A. No, sir.

218 Q. What was the rental value of the surveyor general's property in 1885 and 1886?

A. It did not have any rental value. The roof was leaking very badly and there had been some pretty tough people in there. It was in a very bad shape.

219 Q. Was there any of it yielding any revenue to the estate when Mr. Robertson was here?

A. No, sir.

220 Q. Was any part of the property of the estate yielding any revenue to the estate at the time he was here?

95 A. Yes, sir; as I understood it, one piece of property known as the Slater property was bringing in ten dollars a month.

221 Q. Was that all of the property that was bringing in any revenue?

A. Yes, sir.

222 Q. What do you know about the east half of lot ten, block 28?

A. That is the lot known as the Loenard lot.

223 Q. Did that ever belong to the estate of Ella V. Davis?

A. Yes, sir.

224 Q. Was that property included in the deed made by Alexander H. Robertson, the trustee, to M. O'Donahoe?

A. It was, but after I got the property I found there was one foot they had conveyed that they had no title to, and I had to buy that of Mr. Harrold.

225 Q. What was the condition of this property you have described as the Leonard property with respect to title, say, in December, 1885, and prior thereto?

Q. It was in litigation at that time.

226 Q. What sort of litigation?

A. A foreclosure was being had on the part of the estate against T. W. Shrock.

227 Q. What was that based upon?

A. I think it was for money loaned.

228 Q. Loaned by whom?

A. Ella V. Davis to Shyrock.

229 Q. And he took the property for it?

A. That is my understanding of it, but I never had much personally to do with it.

230 Q. You may state what, if anything, was done, whether that

property was sold under the foreclosure of that mortgage given by Shryock to the estate.

A. It was.

231 Q. Who purchased it at the sale?

96 A. I did.

232 Q. Was that property deeded to you by anybody?

A. Yes, sir; by Mr. O'Donahoe.

233 Q. Was it deeded to you by anybody else; and, if so, by whom?

A. By Mr. Shryock.

234 Q. Did you receive a deed for that property from any other person?

A. No, sir; I guess not. Yes, sir; the sheriff.

235 Q. In what way did you and from whom did you get the other deed except the deeds from O'Donahoe and the one from Harrold?

A. By buying it — the foreclosure sale.

236 Q. Under the foreclosure of the mortgage?

A. Under the foreclosure of the mortgage.

237 Q. What is that paper you have in your hand?

A. This is the sheriff's deed.

238 Q. Under the foreclosure of that mortgage?

A. Yes, sir.

Defendant offers in evidence the sheriff's deed, made under the sale under the mortgage by J. C. Eikenberry to Milton D. Polk, for the east half of lot 10, block 28, in the city of Plattsmouth, Cass county, Nebraska, of date June 4th, 1886, and filed for record June 4th, 1886, at 6.40 p. m., together with all the endorsements thereon. A copy of said deed is hereto attached, marked Exhibit "H.

No objection to its introduction into evidence was made by the plaintiff.

239 Q. The property which you mentioned a few moments ago as having two old shanties situated upon it is what property now?

A. The property where I live.

240 Q. What was the value of that property in the year 1885 and the early part of the year 1886 upon the market here in this town?

A. Well, it would have been very difficult to sell that property at that time for $700.

97 241 Q. How do you fix the value at that time?

A. Dr. Salsbury had a house nearly right across the street that he was very anxious to sell for $400 for a long time, and it was a much better property, and there was another house across on the corner that sold for $350 or $400 about this time, and that was a much better piece of property and the lots were much nicer.

242 Q. What, if any, money has been expended by you upon the property?

A. I have expended more or less on all of the property. On the property where I lived I have paid out for fencing and buildings over $2,000.

243 Q. What, if any, money have you expended on the rest of the property concerning which you have been testifying? Specify such piece as you have made expenditures of money upon, if any expenditures were made.

A. Since I purchased it I have expended—some $200 I expect would cover the amount on the surveyor general's property and about $400 on the Slater property.

244 Q. Did you expend any money on the property that Leonard purchased?

A. No; nothing except the $50 for the additional foot—$50.00 or $100, I am not sure which I paid for it.

245 Q. What was the value of that Leonard property, the east half of lot ten, block 28, in the fall of 1885 and the spring of 1886?

A. I tried hard to sell it, and it appeared that no one wanted the property except Leonard, and he was in such a position that he was most compelled to build, and he gave me what was then considered and what I considered a big price for that piece of property on the north side of the street, $1,550 or $1,600, I believe.

246 Q. You may state whether or not at the time that Mr. Robertson deeded that piece of property to Mr. O'Donahoe, if he deeded it to him, the estate of Ella V. Davis had any title to that property.

A. No; it had not at that time.

98 247 Q. What did they have upon it?

A. They had a mortgage.

248 Q. Now you may state of you know anything about the sale of some lots on the south side of Main street to George N. Dovey or to the Doveys; and, if so, what lots were sold to them or purchased by them and under what circumstances they were sold. State all you know in relation thereto.

A. Yes, sir; the Doveys were cramped for room and wanted more room on which to put up a store-room. They had established an extensive business and their old store-room was not large enough, and they paid in the neighborhood of $3,500 for a full lot, and it was the talk of the town at the time that it was an outrageous price to pay for the property. It was undoubtedly more than the property was worth to anybody else.

249 Q. Then the reason that they paid that price for the lot was because they had to have it, it adjoining them?

A. Yes, sir; they wanted to have the property adjoining them, as they were going to build and extend their store, which they did.

250 Q. How many lots did they purchase?

A. One full lot.

251 Q. What is the size of a full lot?

A. Fourty-four feet.

252 Q. What is the size of a business or half lot?

A. Twenty-two feet.

253 Q. You may state if you purchased the property in controversy of M. O'Donahoe.

A. I did.

254 Q. You may state whether or not there was any attempt of

conspiracy on your part to defraud the estate of Ella V. Davis in any way, shape, or manner.

A. No, sir; there was none. Mr. Robertson offered to sell the property to Judge Chapman and others here in town for four
99 thousand dollars.

Cross-examination.

By JOSEPH R. CLARKSON:

255 Q. How long were you in partnership with Judge Chapman before Mr. Robertson came to this city?

A. My recollection is it was about a year.

256 Q. Had he been in the habit of consulting you with reference to the business matters of the firm?

A. Any firm matter that might come up we talked about it, but Judge Chapman was not a man to talk much about anything, and it was when I was beginning the practice of law.

257 Q. You were not generally familiar with the business of Mr. Chapman?

A. No; I was not.

258 Q. Before Mr. Robertson came did you know he was coming?

A. I don't think I did. My recollection is that I did not know anything about it till Mr. Robertson was here, but I might have known it a few days before, but I don't think I did.

259 Q. Did Mr. Chapman introduce him to you?

A. I think he did.

260 Q. What did he say at the time of the introduction?

A. I don't remember what he said any more than he introduced me as a member of the firm. He usually did that, and I think he did at that time.

261 Q. Do you remember what time it was that Mr. Robertson first came into the office?

A. No; I don't. I really was under the impression that Mr. Robertson was here two days, but since hearing him testify I concluded I might be mistaken.

262 Q. What, if anything, passed, in the first conversation, between you, Mr. Robertson, and Mr. Chapman?

A. I think at the first conversation I was in the room but
100 a very short time, and Mr. Chapman and Mr. Robertson said something about the property, and I was not familiar with the property, and it did not interest me, and I don't think I remained in the room but a very short time. They may have talked something about what Mr. Chapman thought about the property and its condition, and so forth, and what was best to be done with it.

263 Q. And until Mr. Robertson came out here that day you did not know that he was coming out here to make a sale of that property?

A. No, sir.

264 Q. And you did not know he had a sale in contemplation?

A. No, sir.

265 Q. Did you know that Mr. Chapman had been attorney for the Davis estate?

A. I don't know. I may have known incidentially of this Shryock mortgage matter that he was attorney in the matter, but I am sure I did not know he was the agent to collect rents for any of the property because I never heard him say anything about it, and this one property paid its rent into the bank.

266 Q. Substantially the first part of the conversation was a mere introduction by Mr. Chapman of Mr. Robertson to you?

A. Yes, sir; and I did not remain long. They were talking about the property.

267 Q. Did you go out first or did they?

A. I think I went out first, but possibly they went out to get a buggy and looked at the property and came back there.

268 Q. Is your knowledge of the gentlemen they saw about town here that day derived entirely from what they told you when they came back?

A. I don't remember now that any of those men whom they saw placed a value upon the property in my presence. I don't recollect it if they did.

101 269 Q. How long were they out of the office between the first conversation and the next time they came together?

A. I am not sure as to that. I think possibly the first thing they did was to look at the property and then went around to see those parties, but whether they saw those parties at the same time they looked at the property I don't remember now.

270 Q. Did you stay in the office while they were out on their drive?

A. I was in the office the most of the time, but I presume I went to the post office, and maybe I stepped down the street a few minutes, but I don't think I had any business to call me away from the office.

271 Q. Did they come back to the office after the drive?

A. That is what I remarked I am not clear about.

272 Q. When did the second conversation occur in the office?

A. I think it occurred some time in the afternoon.

273 Q. There was but one conversation in the morning?

A. Only one that I remember of.

274 Q. What was the substance of the afternoon conversation?

A. It was in reference to this property.

275 Q. They had been examining the property and ascertaining the values?

A. Yes, sir.

276 Q. Did they again go out of the office?

A. I don't know, but I presume they did. I don't know whether I went out and left them in here. It is more than likely that I went out and left them in here.

277 Q. Did you go to any one with Mr. Robertson?

A. No, sir; I did not.

278 Q. When was the stipulation drawn up?

A. It was drawn up some time that day.

102 279 Q. You cannot say whether it was in the morning or afternoon?

A. No; I could not tell; but my judgment would be it was in the afternoon; but then I would not be positive.

280 Q. You were present when the stipulation was drawn up?

A. I think so.

281 Q. And you saw Mr. Robertson sign his name to it?

A. Yes, sir.

282 Q. Was there any one else there at that time?

A. Mr. Chapman was overseeing it.

283 Q. Any one else present?

A. I am not sure. I am not sure whether it was done in this office or in the district clerk's office.

284 Q. Was Mr. Windham present?

A. I don't believe he was.

285 Q. Not at the time the stipulation was signed?

A. I don't believe he was present when Mr. Robertson signed it.

286 Q. Was there any talk between Mr. Chapman and Mr. Windham as to values in your presence and Mr. Robertson's?

A. I don't believe there was.

287 Q. When did you first learn the contents of the stipulation?

A. I don't know to this day what it contains exactly. I did not give it much attention.

288 Q. When did you begin to take an active part in this business?

A. In regard to what?

289 Q. The purchase and sale of this real estate.

A. Pretty soon after he went away.

290 Q. After he left the business of the estate devolved upon you, did it?

A. I don't know as it devolved upon any one, but I rather took it upon myself to write to him in regard to the matter.

291 Q. Did Judge Chapman say to you to write to him?

A. I don't know as he did.

103 292 Q. You knew the stipulation required that Shryock should give a quitclaim deed to Mr. Robertson for the property?

A. No; I don't know as I did. It is possible I knew at the time, and if I did I knew it incidentally. I am sure I was taking no part in the legal management of the matters.

293 Q. You had nothing to do with the legal management of the matters?

—. ——.

294 Q. Did you know what the petition for a license contained?

A. I presume I did. Judge Chapman drew it in my presence.

295 Q. Did he advise with you about the petition?

A. No, sir.

296 Q. But he drew it in your presence?

A. Yes, sir.

297 Q. Did you look it over?

A. I presume I did, but I don't know now.

298 Q. When was it prepared?

A. My recollection is it was prepared first immediately after Mr. Robertson went home and I sent after the names of the heirs.

299 Q. Did you make any investigations of the authorities?

A. No, sir; Judge Chapman has a very peculiar way of working in the office. He would take a spell of cleaning up, as he called it, and he would jump in and draw 3 or 4 or 5 petitions or whatever was before him, and he would look up the authorities afterwards.

300 Q. Did you suppose in January, 1886, that the petition had been filed?

—. I don't know that I did. It is possible that I thought it had been filed.

301 Q. Who filed it?

A. I don't know.

302 Q. Why did you take a quitclaim deed from Shryock to yourself for the east half of lot 10, in block 28?

A. I don't remember any particular reason any more than it was to get a better title.

303 Q. A better title for whom—to you or to the estate?

104 A. It would give me a better title, and it could have been made to the estate if I had not bought.

304 Q. It would give you a better title. Why were you getting title to that property November 7th, 1885, the date of the quitclaim deed?

A. I don't remember now.

305 Q. Were you anxious at that time to acquire that property for yourself and sell it?

A. I don't know whether it was in November, 1885. He was here September 5th, 1885. I don't know the date. I don't know at that time I had made up my mind to purchase the property.

306 Q. Had you made up your mind to purchase that property as early as November 17th, 1885?

A. Whatever the date of that deed might be.

307 Q. You testified on your direct examination that at the time Mr. Robertson conveyed this property to O'Donahoe the Davis estate then had no title to the east half of lot 10, block 28.

A. They hadn't a complete title to it.

308 Q. Did they complete title to it afterwards?

A. Well, by that foreclosure proceeding they would have acquired title.

309 Q. But you bought it at the foreclosure sale?

A. Yes, sir.

310 Q. How did they get title then?

A. I say they would have.

311 Q. Did you buy in for them?

A. No, sir.

312 Q. And you did not take this quitclaim deed from Shryock for them?

A. Why, I would have turned it over to them if I had not purchased the property of them.

313 Q. Did you take the title with that in view?

A. Yes, sir; if I hadn't purchased it I would have turned
105 it over to them.

314 Q. So you were not clearing up the title for yourself?

A. No; I did not have any title to clear up at that time.

315 Q. Did you prepare the deed for Mr. Robertson to sign?

A. I don't remember whether I did or not.

316 Q. Did Mr. Chapman?

A. He might have done it.

317 Q. Who did?

A. I am not sure.

318 Q. Did one or the other of you?

A. I think so.

319 Q. Why was the east half of lot 10, block 28, inserted in that deed?

A. It was a part of the property.

320 Q. Owned by the estate at that time?

A. Yes, sir; they had a right to it.

321 Q. And you say the Shryock foreclosure proceedings were pending at the time of the sale from Robertson to O'Donahoe?

A. I think so.

322 Q. Did not the stipulation settle those proceedings?

A. That stipulation was only signed by Mr. Robertson.

323 Q. And he was the one to stop the proceedings, was he not?

A. Yes, sir; but the stipulation would not be worth very much unless signed by both parties.

324 Q. So Shryock would not be bound by it?

A. I don't know as I was very familiar with that stipulation.

325 Q. Who prepared that stipulation?

A. Judge Chapman.

326 Q. So, if it was not signed by Shryock it was through the negligence of Mr. Chapman?

A. I don't know whether it was Judge Chapman's negligence or Mr. Robertson's.

106 327 Q. What did you think of the stipulation?

A. I say I was not familiar with the stipulation at that time, and I don't remember particularly about it.

328 Q. You understood that that stipulation was in settlement of the claims of the estate in the Shryock mortgage, and that Shryock was to deed that lot to Mr. Robertson, as trustee, to pay up the mortgage, and that Mr. Robertson was to release all other claims the estate might have against him?

A. It was something like that.

329 Q. And after that you got a quitclaim deed to yourself of that very property?

A. On November 10th.

330 Q. Why did you have the foreclosure proceedings run through and you buy in at the foreclosure proceedings in your own name?

A. It was hanging fire there.

331 Q. Who had charge of it?

A. Judge Chapman.

332 Q. Did you as his partner?

A. No; I never had anything to do with it.

333 Q. Could not you have dismissed the proceedings?

A. Yes, sir.

334 Q. Was it not the stipulation so to do?

A. It might have been. I really don't know. At this time that was not done. I think I took the judge's advice on that.

335 Q. The quitclaim deed from Shryock to you and the deed from Robertson to O'Donahoe both went on record the same day, didn't they?

A. I think so.

336 Q. And before the deed from Robertson went on record and before your quitclaim from Shryock went on record, you had sold this lot to Leonard?

A. I don't remember.

337 Q. Did not you sell to Leonard on the 22nd day of January?

107 A. I don't know exactly when the Leonard sale was.

338 Q. You say in your talk with Perry Walker that you said that you did not say what you would have been willing *yo* buy the property for if you had the money?

A. Yes, sir; I told Mr. Walker I would be willing to take the property if I had the $4,000.

339 Q. Why would you have taken it?

A. Because I had faith in the town that it was growing and property was increasing in value.

340 Q. But you did not think it would be a good purchase?

A. Yes, sir; and I thought the town would grow, but everything was very dull at that time.

341 Q. Were you anxious to get it?

A. No; I was not particularly.

342 Q. Was Perry Walker in this conspiracy against you?

A. I don't know as Walker was particularly. I think he is a fair man. The parties that were in the conspiracy manipulated the witnesses.

343 Q. You think he did not manipulate them?

A. His recollection did not seem to me to be exactly right.

344 Q. If you were thinking of buying this property at the time you took this quitclaim deed, might not you have seen Walker and Parmalee with reference to buying?

A. No; I did not see Parmalee. I don't like him and I don't want any truck with him.

345 Q Did you think he would get too much of the profits?

A. In common parlance, he is anything but an honest, agreeable man to do business with.

346 Q. Did O'Donahoe pay you any money?

A. No; I don't know that he did. I think I took it off his hands about that time.

108 347 Q. How did you raise the money?

A. Why, I made arrangements with my father to get money of him.

348 Q. And you got it of him, did you?

A. I got some money of him.

349 Q. Did you get any money of your father that went into this purchase?

A. Yes, sir; I got some money to use in that connection.

350 Q. And you used it?

A. I think I did.

351 Q. Don't you know you did not—that you got money of Leonard to use in that connection?

A. I got some money of Leonard about that time, but I had got the money of my father to use in that connection, and I don't know that I used the Leonard money.

352 Q. Don't you know the cash you got from Leonard from the sale of that lot is the first money you used to remit to Mr. Robertson?

A. No; I don't.

353 Q. What money did you pay the taxes with?

A. I don't know; I am not clear as to that.

354 Q. When did you get the money from your father?

A. I had the promise of it a long time previous to this, and I got it some time about this time?

355 Q. Did you not get it in the shape of notes and sell those notes to Mr. Waugh?

A. No, sir.

356 Q. That was afterwards?

A. Yes, sir.

357 Q. Why did you write to Mr. Robertson that Mr. O'Dohahoe had paid some money?

A. It was careless business method. There is no reason why I should not have notified what-his-name right away, but after
109 monkeying with O'Donahoe as long as I did I felt somewhat chagrined that we had not consummated the trade; that is the only reason.

358 Q. What was the cause, then, that you felt you ought to do the right thing by Mr. Robertson?

A. I felt that this O'Donahoe had been hanging fire a long time and I was derelict.

359 Q. You felt you was derelict in not procuring the proper purchaser?

A. In not getting it done; that was because O'Donahoe was backward in his payment. I had been slow in pressing the matter to a conclusion, and that is the only reason I call to mind why I did not tell formally in the first letter to him.

360 Q. Why did you misrepresent to him?

A. I don't know as I did misrepresent anything to him as to the value of the property or anything material.

361 Q. You did not receive $1,000 from O'Donahoe?

A. Not directly; no.

362 Q. Did you indirectly?

A. Well, I was to pay it over to him and I apprehend it made not particular difference so long as he got the money.

363 Q. You was to pay it over to whom?
A. To Mr. Robertson.
364 Q. You was to pay what over to Mr. Robertson?
A. The $1,000.00.
365 Q. Of your own money?
A. Yes, sir.
366 Q. So you thought you would say to him that you had received it of O'Donahoe?
A. I stated in that letter I received of O'Donahoe I received so and so. I hadn't ought to have done it, but it was my careless method of doing business, and I apprehended it did not make any particular difference to him whether it came from O'Donahoe
110 or Polk, so he got the money.
367 Q. You wrote him two letters with reference to the sale?
A. Not that I remember of.
368 Q. From the time the sale was consummated and up to the time of this final settlement, on January 26th, 1886, you misrepresented things right along?
A. No, sir.
369 Q. Was it your understanding that O'Donahoe was to give a mortgage back on all of the property that Robertson deeded to him?
A. Yes, sir; that was my idea of it, and I sent him the papers, and he returned them; but there was a mistake in the mortgage—it didn't include the Leonard property.
370 Q. Did you tell Robertson of that?
A. No; I don't know that I did.
371 Q. When did you first notice it?
A. I noticed it when the matter—well, I think I noticed it about the time it was to be recorded.
372 Q. Did you notice it before you sent it on the first time?
A. I don't know whether I did or not.
373 Q. You would not have sent it if you had?
A. I really don't know.
374 Q. But you know you did notice it before it was recorded?
A. Yes, sir.
375 Q. Why did you record it without correcting it?
A. Why, I thought he was getting good security.
376 Q. Which did you consider the most valuable lot—single lot—of the whole batch?
A. The most valuable lot, ordinarily, if it had not been for the way Leonard was fixed, would have been the Slater lot.
377 Q. You consider lot ten, block 28, worth how much?
A. It was worth 8, 9, 10, 11, or 12 hundred dollars; I don't think you could have sold it for $1,200.
111 378 Q. You considered it perfectly fair to Mr. Robertson, if he had good security, to leave that Leonard lot out?
A. I thought my notes were good. After I had assumed them I thought those notes were good.
379 Q. You did not assume them before that mortgage was on record, did you?

A. I was agreeing to.

380 Q. You had not assumed them at the time this mortgage came back from Mr. Robertson, had you?

A. No; I suppose not.

381 Q. Why did you think your notes were good security at that time?

A. I don't know what time they went on record.

382 Q. I am talking about when it came back.

A. I think I assumed it the 20th of January.

383 Q. Did you not pay some of the taxes on th-s property as early as May, 1885, out of your own pocket?

A. No; I think not; not that I know of or have any recollection of; not out of my own pocket. I would answer that positively.

384 Q. When did you find out that O'Donahoe could not pay the money?

A. It was along about the time that this transfer was made; along some time in January; about January 22nd or somewheres along in January.

385 Q. That you found he could not pay the cash payment?

A. I found he was not making arrangements to pay it and the thing was hanging fire.

386 Q. O'Donahoe was pretty well off, was he not?

A. He and Mrs. O'Donahoe, among them they had some cash. I think she run the cash a part of the time and he run it a part of the time.

387 Q. You felt in selling to O'Donahoe that you were selling to a good man for Mr. Robertson?

112 A. I thought he cer-ainly could pay it out. He and she together had other property here. In fact he was expecting to sell one piece of property for $1,500 to a man named Martin about that time. That was one of the troubles.

388 Q. Why did you delay putting this instrument on record till the 22nd or 28th of January?

A. I don't remember any particular reason now.

389 Q. At the time you sold to Mr. Leonard he had an abstract of title made out?

A. Yes, sir.

390 Q. Did you have it made at that time?

A. I don't know as I did.

391 Q. Did he ask you to have an abstract made?

A. I don't know whether he asked me for an abstract or not.

392 Q. And the title at that time showed up in you, at the time you sold to Leonard?

A. The transfer was made that way.

393 Q. And was not that why you did not put that lot in the mortgage, because you were going to sell to Leonard?

A. No, sir.

394 Q. You were intending to sell to Leonard about the time they were put on record?

A. Those papers were made a long time previous to that.

395 Q. I mean before this mortgage went on record.

A. I may have been talking to Leonard before that mortgage went on record, but not before the mortgage was drawn up.

396 Q. When did you first begin to talk with Leonard about the sale of the lot?

A. Just a very few days before the sale was accomplished.

397 Q. Did he ask you to sell it to him?

A. I don't know whether or not he asked me or whether I
113 told him I was about to acquire the title to it and wanted to know what he would give for it. I don't remember.

398 Q. You began then to have an idea that you might acquire this property as early as the making of the quitclaim deed of Shryock to you?

A. I presume I did. I don't know the date of that quitclaim deed. I don't remember now.

399 Q. Did you ever write to Mr. Robertson after he left here and tell him that you intended to acquire the property and make any overtures towards the purchase of it?

A. I don't know whether I did or not. I saved none of the correspondence, except three or four letters that I happened to get hold of here. I did not apprehend any trouble about it.

400 Q. When he wrote for you to send the mortgage back, if it could be done, why did not you do it?

A. The mortgage at that time had not been recorded. They simply file them down there. That is the only reason why it was not done.

401 Q. Do you remember when that certificate went to him?

A. No; but I remember very distinctly of calling for the mortgage and was informed they were recorded.

402 Q. When did you get the mortgage from the office?

A. I don't believe I ever got it. I am pretty sure that I never got it.

403 Q. Didn't you have enough interest in that mortgage to take it from the files after it was recorded?

A. I don't know how, but I got it in my head that the mortgage was sent to Mr. Robertson.

404 Q. Do you say that mortgage was not on record until after that little certificate was sent by you to Mr. Robertson?

A. I don't think it was. My recollection is that I went in and asked the county clerk for it of date February 18th. That is very clear to me that was the reason.

114 405 Q. I believe you said sales were very dull at that time?

A. Yes, sir.

406 Q. Then there was nothing to prevent the deed and mortgage going on record most any day?

A. Sales were very dull in the town, but they might have been lively in the outside, in the county, so far as that is concerned.

407 Q. Do you say it would take a month to get an instrument of record?

A. They may have neglected them, but it is a matter of fact that

they did not have the mortgage recorded, and he said he would give me a certificate that would do as well?

408 Q. Is that instrument that has been put in evidence the certificate to which you refer?

A. Yes, sir.

409 Q. You call that a certificate?

A. I call that a certificate. Yes, sir.

410 Q. Did you read it over before you sent it to Mr. Robertson?

A. I don't know that I did. I thought I was on my way to the post office, and I put it into an envelope and mailed it.

411 Q. Do you know whether that included the east half of lot 10, block 28?

A. No; I don't suppose it did.

412 Q. And you were sending an instrument to Mr. Robertson that would show that he did not have any security on the most valuable lot he had sold?

A. I supposed I was sending the certificate that I had received from the hands of the county clerk. I wrote to Mr. Robertson to come out here, and I offered to pay his expenses if he would come and get things fixed up satisfactorily.

413 Q. When was that?

A. After this transfer was made.

414 Q. And after you had told him you had assumed the notes?

115 A. I think I wrote him the first of May.

415 Q. And that is the first information you ever gave him, on the first of May, in writing that you had purchased the property?

A. Yes, sir.

416 Q. And you wrote to him to come out here with reference to fixing up the payment of those notes you has assumed?

A. Yes, sir.

417 Q. What arrangement was there as to paying O'Donahoe and giving him the notes and mortgage back?

A. In that sence there was no arrangement. O'Donahoe expected to take all the property, and he monkeyed so long about it and property val-es were not going down and the outlook for the town was better and I told him that I would take them and pay him something for his trouble.

418 Q. How much did you say you would pay him?

A. Well, I don't know exactly. We don't agree very well on that. I told him that I would pay him what was right, and he claimed I agreed to pay him $800, but I don't think I did.

419 Q. You agreed to pay him $200?

A. Yes, sir.

420 Q. $100 to him and $100 to his wife?

A. No; I agreed to pay him $400 or $500 when I sold the property, if the property increased in values so I could do it.

421 Q. Were you more anxious in January, 1886, than in the middle of 1885 to own the property?

A. Yes, sir.

422 Q. Did you see Mr. Parmalee before going to figure with Mr. Robertson about this property?

A. No, sir.

423 Q. You did not go to him and say to him that this man was here and that you thought you could buy that property for $4,000, and ask him to state a figure of $3,500 to $4,000 in case Robertson came to ask him for a price on it?

116 —. No, sir.

424 Q. And you did not do that with anybody in town?

A. No, sir; not a living man. I never thought of such a thing.

425 Q. How much did you expect to make off of the property?

A. I don't know what I expected to make.

426 Q. But you expected to make something?

A. Yes, sir.

427 Q. How much did you figure you ought to make?

A. I don't know. I might have thought at the time that I could make a thousand dollars out of it. I might have thought if I held it it would grow in value until I could sell it at an advance.

428 Q. How long did you think you would have to hold it until you could make a thousand dollars off of it?

A. I don't remember what my ideas were at that time.

429 Q. How much did you value the east half of lot 10, block 28, to Leonard, the first offer you made him?

A. I don't know the offer I made to him.

430 Q. It was over $1,600, was it not?

A. I don't know that I made him an offer. I might have said $1,700. I usually try to ask enough.

431 Q. Did you not try to get the deal consummated and get the cash out of him to make this first payment before you put this first instrument of record?

A. No, sir.

432 Q. How did you expect to make that payment?

A. I expected to make it from the money I received from my father.

433 Q. When did you receive those funds?

A. Along about that time. I always borrowed more or less money of my father.

434 Q. How long before?

A. I could — say just what time.

117 435 Q. Give an idea.

A. It might have been two or three weeks before.

436 Q. It was two or three weeks before you told Walker you would buy the property if you had the money?

A. I have not stated the time I talked to Walker about it.

437 Q. You had not talked to Walker about your buying that property before Robertson deeded it to O'Donahoe, had you?

A. When Robertson deeded it to O'Donahoe, I did not have the money to buy it at that time.

438 Q. What was the date you had your father's money, then?

A. I had money of him before January 26th.

439 Q. And you did not have it as early as December 1st?

A. No; I think not.

440 Q. Didn't you hold off the statement to Mr. Robertson until you got a chance to sell this to Mr. Leonard?

A. I don't know whether I would have bought the property or not if I had not been able to sell one lot, because things were pretty quiet, but there was no disposition on my part to get the better of Mr. Robertson.

441 Q. It was really on the strength of this money you were able to make this statement to Mr. Robertson and to make a remittance of the funds?

A. No, sir.

442 Q. What is the property where you are living worth to-day?

A. Well, I don't think I could sell where I live to-day for any more than I have put on it in the way of improvements. I don't believe it would bring more than $2,000.

443 Q. What is it worth?

A. I think it ought to be worth more money than that; taking it on the market, it is not worth over 22 or 23 hundred.

444 Q. When did you pay O'Donahoe the money or the
118 sum of money that you had promised him if you made this deal?

A. I paid him some at the time.

445 Q. How much?

A. I am not sure how much now—something like $150 or somewhere along there.

446 Q. When did you pay him any other money in connection with this?

A. I gave him my note for $500.

447 Q. You gave him altogether the sum of $650 and assumed these various payments and advanced the cash?

A. Yes, sir.

448 Q. Then you expected to make more than $1,000?

A. This note I gave to O'Donahoe, of course, I did not give to him at the time. I don't know what my ideas were about what I would make. I thought I might make $1,000 and I might make more.

449 Q. When did you give O'Donahoe this last $500 note?

A. He demanded it and said it was a part of the contract.

450 Q. What contract?

A. The contract that I mentioned; that I agreed if he would release — I would give him 4 or 5 hundred dollars. He claimed $800, and I thought that was not the agreement, and I said the agreement was for 3, 4, or 5 hundred dollars.

451 Q. You could easily have proven that, could you not?

A. No; it was a matter between he and I.

452 Q. As between O'Donahoe and you—you saying it was not so and he saying it was—the burden of proof being on him, you would have come out all right, would not you?

A. I did not want any litigation in regard to the matter, and this trouble came up too.

453 Q. You paid him the $500 after this suit was commenced?

A. Yes, sir; I gave him my note for it.

119 454 Q. And you knew that we wanted him as a witness?

A. I could not say I knew you wanted him as a witness, but I presumed you did.

455 Q. You had heard we did, hadn't you?

A. Yes, sir.

456 Q. And between the time you heard we wanted him as a witness and the time he appeared at the office of Congdon, Clarkson & Hunt under a subpœna, befo-e the examiner, you gave him your note for $500, didn't you?

A. I presume it was between those times.

457 Q. Is that your letter (hands witness a paper)?

A. Yes, sir.

458 Q. I want to call your attention to a letter of date February 1st, 1886, and directed to A. H. Robertson, Baltimore, Maryland, signed Chapman & Polk, by Polk, and ask you if this letter contained the certificate referred to in your examination to-day and whish was put in evidence before the examiner August 15th, 1889.

A. I presume it did; I see that is dated February 21st, and the certificate was d-ted February 15th; I was of the opinion I sent that off immediately, but it may have been sent later. This date, February 21st, may have been correct.

Plaintiff offers in evidence the letter as designated above, marked Exhibit "I" and made a part hereof.

(Excused.)

Hereupon the further taking of testimony in this cause is continued until Thursday, October 16th, 1889, at the office of Beeson, Polk Bros. & Root, at Plattsmouth, Cass county, Nebraska.

120 EXHIBIT A.

In the District Court, 2nd Judicial District in and for Cass County.

THE ESTATE OF ELLA V. DAVIS
vs.
THOMAS W. SHRYOCK.

It is hereby stipulated and agreed that in consideration of a full and complete settlement of all matters of difference between the estate of Ella V. Davis and Thomas W. Shryock, which includes a settlement of the demand said Shryock has against said estate for services as agent of the same at Plattsmouth, Nebraska, and the mortgage claim said estate has and holds against said Shryock, the said Thomas W. Shryock agrees to convey the E. ½, half, of lot No. 10, in block number 28, by quitclaim deed to Alexander H. Robertson, Esq., in trust for the use of said estate, said estate in consideration of the conveyance of the said E. ½ of lot 10, in block 28, hereby releasing said Shryock from all liability upon said indebtedness.

ALEXANDER H. ROBERTSON,
Trustee of the Estate of Ella V. Davis.

September 5th, 1885.

Endorsements: Filed September 5th, 1885. W. C. Showalter, clerk D. C.

EXHIBIT "B."

In the District Court, 2nd Judicial District in and for Cass County, Nebraska.

In the Matter of the Application of ALEXANDER H. ROBERTSON for a license and order of the court to carry out the provisions of the last will of Ella V. Davis, deceased, by the sale and conveyance of certain real estate in Cass county, Nebraska.

And now comes Alexander H. Robertson, plaintiff, and here represents to this honorable court that he is the sole executor and trustee of the estate of Ella V. Davis, late deceased, of —— in the
121 State of Maryland; that on or about the 1st day of March, 1881, said Ella V. Davis departed this life, leaving a certain last will by which she gave, bequeathed, and devised all of her estate, both real and personal, to her heirs, naming them, and that said deceased died *siezed* of the following-described real estate situated in Plattsmouth City, Cass county, Nebraska, which is all the estate, either real or personal, owned by the said deceased in Nebraska, to wit, twenty feet off the west side of lot number twelve (12), in block number twenty-nine (29); lots one, two, three, four, five, and six, in block number two; also lots one, two, three, four, five, and six, in block number eighty-nine (89), in Plattsmouth City, and also the south half of block No. five (5) and lots one, two, three, four, five, and six, in block number eight (8), in White's addition to said Plattsmouth City.

That said last will has been duly admitted to probate in the State of Maryland, where said deceased died, and at the place of her domicil at and before the time of her death, and that said last will has been duly admitted to probate and proved in the county court of Cass county, Nebraska, and that the law in respect to probating and proving of said last will in Cass county, Nebraska, has been fully complied with.

Your petitioner further represents that by the terms of said last will the trustees of said estate were given the power and authority under said will and under and by virtue of the 8th clause thereof to sell such real estate of and belonging to said estate as yields no income and which had or may become unproductive and which may by reason thereof be depreciating in value, the authority conferred upon said trustee being in words as follows: "Seventh. The eight- clause of my will is hereby revoked. My trustee shall have the power to sell only such real estate as yields no income in case the same cannot be leased to advantage."

Your petitioner represents that said estate in Plattsmouth
122 yields no income whatever; that it is out of repair and rapidly depreciating in value, is incumbered with taxes, and that said estate has no means by which petitioner can pay said taxes now due and unpaid and which amount to the sum of $300.00.

That it would take at least an outlay of $1,500 or $2,000.00 to

place the said real estate in condition to lease the same profitably in addition to paying the taxes now due and which will shortly become due upon said real estate; that all of said real estate except the west half of lot twelve, in block 29, in said city, lies distant from Main street and the business portion of said city of Plattsmouth, and that there is no probability that the same will advance in value or even maintain its present value owing to its condition and the unpaid and delinquent taxes now standing charged against the same and remaining unpaid.

Your petitioner further represents that by the terms of said will Emma Prestman, Mrs. Amanda Hawkins, George R. Morrell, & Sarah Barnes are now the only surviving heirs and devisees of the estate of said Ella V. Davis; that all of said estate belongs to said Amanda Hawkins, Emma Prestman, George R. Morrell, & Sarah Barnes, who resides in the State of Maryland, and who join this petitioner in this application to the court to sell and dispose of and, as trustees and executor of saod estate, to convey the whole of said estate in Plattsmouth City by good and sufficient deed to the purchaser or purchasers thereof.

Wherefore your petitioner prays upon a full hearing hereof that this court will ratify and approve the conditions of said will and fully license this petitioner to proceed under the same to sell and convey said real estate at private sale and made due report of his proceedings herein to this honorable court, and for full relief in the premises.

ALEXANDER H. ROBERTSON,
Trustee and Executor of the Estate of Ella V. Davis, Deceased, and
AMANDA HAWKINS,
EMMA PRESTMAN,
123 GEO. R. MORRELL AND
SARAH BARNES,
Sole Heirs and Devisees,
By CHAPMAN & POLK, *Their Attorneys.*

Endorsements: Civil Docket J, page 31. Term, April, A. D. 1886. No. of case,—. Cass county district court. In the matter of application of Alexander H. Robertson for a license and order of the court to carry out the provisions of the last will of Ella V. Davis, deceased, by the sale and conveyance of certain real estate in Cass county, Nebraska. Petition for license. Docket fee, $2.50, p'd. Filed Feb. 4th. 1886. W. C. Showalter, clerk D. C. Disposed of — term, A. D. 18—. Attorneys, Chapman & Polk, plaintiff; ——, defendant.

EXHIBIT "C."

Hon. A. H. Robinson, Baltimore, Md.

MY DEAR SIR: Your favor of recent date at hand. The note you speak of was duly received by the bank and is in their hands for payment. I traded O'Donahoe out of the property and had a note of $800.00, which was due several days ago, that I expected to put

right on that note, as I have assumed the payment of them; but the party did not pay promptly, as I expected. He says, however, he will get me the money as soon as he can, which will not be long.

If nothing happens, I want to pay the other two notes in August.

By the way, I have left fourteen sections of western Nebraska land, at from four to five dollars per acre. It is choice, smooth land, and if you could dispose of any of it for me I will give you a cash commission of from three hundred to four hundred —.

EXHIBIT "D."

BALTIMORE, *Nov.* 17*th*, 1885.

Messrs. Chapman & Polk.

MY DEAR SIRS: Yours of the 14th is before me. I am decidedly of the opinion that the property in your city should be sold and that, to-, at once. I think the offer a fair one, and you are 124 authorized to accept the same.

Please send me the mortgage and notes as soon as consummated.

Yours very truly, A. H. ROBERTSON.

Endorsements: This letter marked on Aug. 16th, 1889, by the examiner for identification Exhibit 27. C. A. Potter, examiner in chancery.

EXHIBIT "E."

BALTIMORE, *Dec.* 17*th*, 1885.

Messrs. Polk & Chapman.

GENTLEMEN: I received letter this morning per express, enclosing deed, notes, and mortgage. I have executed the deed and enclose herewith.

Please have mortgage recorded after affixing your official seal, and when recorded please return to me if the original can be had; if not, a certified copy.

Please see that a decree is passed by your court authorizing sale before you deli-er deed; under our arrangement *of* fee of $400.00 was to be charged and divided between us.

There is a small amount of rents in the hands of the cashier of one of the banks, which I wish you would collect for me and acc't with me.

I think it would be well that the court which passes the decree should order the payment of counsel fees; and, if so, please send me a copy of the order.

Of course, I do not wish to send deed to bank to be delivered to you. You are associated with me as counsel, and it goes without saying I employed you because I had ample confidence in you.

As the whole fund is either paid or secured, I consider this the time for allowance of fees.

Yours truly, A. H. ROBERTSON.

Endorsements: This letter is marked "Exhibit 28," August 16, '89, by me for indentification. Chas. A. Potter, examiner in chancery.

125 EXHIBIT F.

BALTIMORE, *February 9th*, 1886.

Milton D. Polk, Esq.:

You are authorized in my name and on my account to collect all rents and — belonging to the estate of Ella V. Davis and to receipt for same.

ALEXANDER H. ROBERTSON,
Trustee of the Estate of Ella V. Davis.

Endorsements: This letter marked Exhibit 28 for identification by me. C. A. Potter, examiner in chancery.

EXHIBIT "G."

BALTIMORE, *February 15th*, 1887.

M. D. Polk, Esq.

DEAR SIR: I was glad to receive the check for $300.00, and hope it may be convenient for you to pay the balance in a very short time. I wil- credit the note with this payment.

I wish you would push the Hyon matter, as it has stood so long. He surely is ready to settle. See to this, please, at once.

Yours very truly, A. H. ROBERTSON.

Endorsements: This letter marked for identification Exhibit 29 by me Aug. 16th, 1889. C. A. Potter, examiner in chancery.

Attached to this was an envelope to Milton D. Polk, Esq., attorney-at-law, Plattsmouth, Nebraska, which envelope had the return card of "Robertson & Marbury, attorneys and counsellors at law, No. 41 Lexington street, Baltimore." This envelope was endorsed as follows: "This envolope is marked for identification 'Exhibit 30' by me August 16, 1889." C. A. Potter, examiner in chancery.

EXHIBIT "H."

Know all men by these presents that whereas at the September term, A. D. 1885, of the district court of the second
126 judicial district of Nebraska, held within and for Cass county, Nebraska, William A. Davis, executor of the estate of Ella V. Davis, deceased, recovered a judgment against Thomas W. Shryock and Rachel A. Shryock for the sum of eighteen hundred eighteen and $\frac{26}{100}$ dollars and costs of suit, taxed at thirty-one and $\frac{3}{100}$ dollars;

And whereas it was then and there further ordered in the said action that in default of payment of the judgment aforesaid by the said Thomas W. Shryock and Rachel A. Shryock that the mortgaged premises mentioned and set forth in the pleadings in the

said cause be appraised, advertised, and sold under the direction of J. C. Eikenbary, sheriff of said county of Cass;

And whereas the said Thomas W. Shryock and Rachel A. Shryock having made default therein, the said J. C. Eikenbary, sheriff as aforesaid, under and by virtue of the order of the court to him duly directed, did, on the sixth day of March, A. D. 1886, at the south door of the court-house, in Plattsmouth City, in said county of Cass, having first summoned two freeholders, residents of said Cass county, and administered to them an oath impartially to appraise said premises, and the said sheriff, together with the said freeholders, having made an appraisement, in writing, of said premises, and having given due and legal notice of the time and place of said sale for not less than thirty days prior thereto in the Plattsmouth Weekly Mail, a newspaper printed in and in general circulation in said county of Cass, sell the said premises at public auction to Milton D. Polk for the sum of ten hundred and seventy-five dollars, he being the highest bidder therefor, and said last-mentioned sum not being less than two-thirds of the appraised value thereof, which sale was afterward, at the April term of the said district court, A. D. 1886, examined and confirmed by the said court and the said J. C. Eikenbary, as such sheriff, ordered to make a deed of the said premises to the said Milton D. Polk:

Now, therefore, I, the said J. C. Eikembary, sheriff of the
127 county of Cass as aforesaid, in consideration of the premises and by virtue of the powers vested in me by law, do hereby give, grant, and convey to the said Milton D. Polk and his heirs and assigns all of the estate, right, title, and interest of which the said Thomas W. Shryock and Rachel A. Shryock, defendants, *was* seized and possessed at the time the said mortgage mentioned and set forth in the pleadings of this case was given or at any time thereafter in and to the premises sold as aforesaid, to wit:

The east half of lot ten (10), in block twenty-eight (28), in the city of Plattsmouth, Cass county, Nebraska, with all the appurtenances thereto belonging; to have and to hold the same to the said Milton D. Polk and his heirs and assigns and to them and their use and behoof forever.

In testimony whereof I have as such sheriff hereunto set my hand this 4th day of June, A. D. 1886.

J. C. EIKENBARY,
Sheriff of Cass Co., Nebraska.

Executed and delivered in presence of—
W. C. SHOWALTER.

THE STATE OF NEBRASKA, } *ss:*
Cass County, }

On this 4th day of June, A. D. 1886, before me, W. C. Showalter, clerk of the district court held within and for said county, personally appeared J. C. Eikenbary, sheriff of said county, to me well known to be the identical person described in and who executed the foregoing instrument of conveyanee and who acknowledged said

instrument to be his voluntary act and deed as said sheriff for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 4th day of June, A. D. 1886.

[SEAL.] W. C. SHOWALTER,
Clerk of District Court, Cass County, Nebraska.

Endorsed on back: Sheriff's deed. (Sale under mortgage.) J. C. Eikenbary, sheriff, to Milton D. Polk.

128 THE STATE OF NEBRASKA, } ss:
Cass County, }

Filed for record this 4th day of June, A. D. 1886, at 6 o'clock p. m., and recorded in the office of the clerk of said county in Book 11 of Deeds, on page 591.

J. M. ROBINSON, *Clerk.*
C. C. McPHENN, *Deputy.*

Ch. to M. D. Polk.
6, 4, '86.

EXHIBIT "I."

PLATTSMOUTH, *Feb.* 21*st*, 1886.

A. H. Robertson, Esq., Baltimore, Md.

MY DEAR SIR: Supreme court is in session here (at Lincoln) now, and we have been more than busy, so that I have not been able to collect what is due you, but will give the matter attention this coming week; will get a statement from bank, together with all monies in their hands, and send.

I enclose certificate of Co. clerk as to filing of mortgage, as per your request.

Yours hastily, CHAPMAN & POLK,
By POLK.

JAMES S. MATHEWS, a witness of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and sayeth as follows:

Examined by G. W. COVELL:

1535 Q. State your name, age, place of residence, and occupation.

A. James Mathews; age is 48 years; I have resided in Plattsmouth since 1876 and in the county since 1867. From 1876 to 1881 I was in a law office with Mr. Chapman, and since 1881 I have been engaged in the law, loaning money, and the real-estate business.

129 1536 Q. You mean the city of Plattsmouth, Cass county, Nebraska?

A. Yes, sir.

— Q. How much of the time since you have lived in Plattsmouth,

Cass county, Nebraska, have you been engaged, if at all, in dealing in real estate and selling real estate?

A. Well, perhaps since 1878 or 1879 down to the present time.

1538 Q. What has been your means of knowledge, if any you have, as to the values of properties in Plattsmouth and its several additions during the time you have been engaged in selling and dealing in real estate for other parties?

A. I have taken pains to inform myself as to prices and I had property priced to me and I have sold some to parties and I bought some, so that I am informed as to the values of property.

1539 Q. In the year 1885, and particularly in the latter part of that year and the early part of the year 1886, were you not familiar with the values of real estate in the city of Plattsmouth and its several additions, the worth of real estate, and the value of real estate upon the market during the period mentioned?

A. Yes, sir; I think so.

1540 Q. Did you know the situation and condition of the several pieces of property known as that which belonged to the Ella V. Davis estate during the year 1885 and the early part of the year 1886?

A. Yes, sir; I think I know about it.

1541 Q. You may state if you knew what the value of the east half of lot ten, in block 28, in the city of Plattsmouth, situated on Main street, in the city of Plattsmouth, and now known as the Leonard property, was in September, October, November, and December, 1885, and January, February, March, April, and May, 1886; and, if so, what was the value on the market?

A. Well, in April and May, 1886, it might have been a
130 little lower than it was earlier. I think it would have been difficult to sell that for more than $1,100 or maybe $1,200, but I don't think it could have been sold to exceed $1,100.

Plaintiff moves to strike out the answer of the witness as not responsive to the question.

1542 Q. What was the value of that property in December, 1885, in the market?

A. I should think it was no greater than I stated—$1,100, or perhaps $1,200 at the outside.

1543 Q. Then you have fixed its value at or about the month of December, 1885, have you?

A. Yes, sir.

1544 Q. What was the value, if you know, of the property known as the Slater property, and described as the west twenty feet of lot 12, in block 29, in the city of Plattsmouth, Cass county, Nebraska, in September, October, November, and December, 1885, and in January, 1886?

A. Its value is about $1,200.00.

1545 Q. What was the value of the property now known as the Drummond property in September, October, November, and December, 1885, and January, 1886, if you know?

A. That, I think, was six lots.

1546 Q. Lots one to six, block eight, White's addition, and lots

one to six, in block eighty-nine, Plattsmouth, each being fractional, and all of them being equivalent to six full lots or about that.

A. I should think $500.

1547 Q. If you know what the value was of the property known as the surveyor general's property, being lots one to six, in block two, in the city of Plattsmouth, inclusive, in September, October, November, and December, 1885, and January, 1886, on the market, state it.

A. That possibly was worth $700 or $800 *dollars.*

1548 Q. You may state, if you know, what the value of
131 the property now known as the Polk property, where Milton D. Polk resides, being lots seven to twelve, in block 5, in White's addition to the city of Plattsmouth, was in September, October, November, and December, 1885, and January, 1886; and, if so, state the value thereof in the market.

A. There was six lots there and two houses there, if I remember right, and I should think $800 was the value of them.

1549 Q. In what condition, if you know, were the two houses you mention upon that property occupied by Mr. Polk as his residence?

A. The houses were badly out of repair and were not painted.

1550 Q. State the condition of the buildings as you remember it.

A. They were badly out of fix; they had been rented to a rough class of tenants for a long time and no care was taken of the property and it needed p*l*ainting, and they had run down so that they were of no practical value.

1551 Q. State whether or not if, within your knowledge, they were yielding any rent during the period of time mentioned, from September, 1885, to January, 1886.

A. They were not.

1552 Q. You may state if you know of property being sold during the year 1885 in the vicinity of any of the property mentioned in the preceding questions put to you in this examination; and, if so, state what pieces of property were sold and at or about what time and the prices thereof respectively, if you have any knowledge in relation thereto.

A. I do not remember without refreshing *your* memory.

1553 Q. You may refresh your memory if you have a memorandum of such property sold; and, if so, state wh*q*t pieces of property were — at or about that time and the prices at which they were sold at or about that time.

1554. By Mr. CLARKSON: Before he answers that question let me ask him a few questions.

1555. Mr. CLARKSON: With reference to the memorandum
132 from which you propose to aid your memory, was it made at or about the time of these various transfers of property?

A. No, sir.

1556 Q. You have made an examination of the records and have taken that list from it?

A. Yes, sir.

1557 Q. So you are not refreshing your memory from a memorandum you made at the time of the various transfers and which you kept?

A. I do remember of some of the property being sold and at what time they were sold, but of course I refreshed my memory about them.

1558 Q. By looking up the record of the transfers?

A. Yes, sir.

Plaintiff objects to the witness testifying from the memorandum at all.

1559. By Mr. COVELL: You may now answer the question.

A. Lots one and two, in block 95, sold in June, 1885, for $200.

1560 Q. Specify whether they are in the city of Plattsmouth proper or what additions they are in.

A. They are in the city of Plattsmouth, and lots 1, 2, and 3, in block 85, sold for $175 in March, 1885.

1561 Q. Near what property is this?

A. It lies near the Drummond property, and lots one to eight, in Micklewaite's addition, sold for $250 in April, 1887. I believe these are about all the sales I have noted that occurred about that time near that property. There are some later sales that are within my memory, sales made, perhaps, a year after the sale of this property.

1562 Q. The property you have mentioned is in the vicinity of the Drummond property, is it?

A. It is in the vicinity of the Drummond and the Polk property; not very far from either.

1563 Q. What, if any, property did you know of having
133 been sold at or about the time mentioned, near the property known as the surveyor general's property, and if you knew any such state the pieces of property by descriptions and the prices at which they were sold.

—. ——.

1564. By Mr. CLARKSON: Are you testifying with reference to these transfers that follow from some memorandum that you have thereof?

A. I knew of these sales being made and about the time they were made, but I did not know the prices, but I knew of the sales, and the sales were made when, perhaps, prices had raised.

1565 Q. Are you, without reference to that memorandum, able to state the prices at which the property sold?

A. The property sold later than the Davis property.

1566 Q. All the property you are about to testify to?

A. Well, yes, sir. I may not be able to give an exact list of the property without referring to the memorandum, but I can refer to the property without it.

Plaintiff objects to the witness testifying from the memorandum at all.

1567. By Mr. COVELL: You can answer the question as previously put.

A. Early in 1887 Mr. Parmalee bought lots 3, 6, and 7, in block 55, and three houses that were nearly new, and lots 4 and 6, in block 57, with two houses, in the city of Plattsmouth, and lot 8, in block one, in Donelan's addition, and lot 8, in block 32, with one small house, for $2,900.00.

1568 Q. Near what part of any of the property of the Davis estate is this property which Mr. Parmalee purchased?

A. It is not near any of it.

1569 Q. How far away is it?

A. Well, it is principally south from business—south and west—and this is north and east.

1570 Q. You may state whether or not the relative values of the property you have described as being sold to Mr. Parmalee
134 was about the same as the relative values of the property known as the surveyor general's property and of the Drummond property and of the property upon which Mr. Polk lives. State the facts in that regard as you know them.

A. Well, this other was very much better in condition. The houses were nearly new and most of the property was finer. They were all good lots with the exception of one piece of the property, I believe.

1571 Q. As to the value of the lots—that is, without reference to the improvements thereon—which, in your judgment, was of the greater value, the property belonging to the Davis estate or the property purchased by Mr. Parmalee?

Plaintiff objects as immaterial and irrelevant.

A. Excepting the Main-street property, I think the property bought by Mr. Parmalee was better, block for block.

1572 Q. What time was this purchase made by Mr. Parmalee, if you know?

A. I think it was March, April, or May, 1887.

1573 Q. You may state whether or not in 1887 prices had advanced or had depreciated since 1885.

A. I think they had advanced, or at least there was more property changing hands. I think so.

1574 Q. Do you know of property having been sold in the vicinity of the west 20 feet of lot 12, block 29, at or about the months of September, October, November, and December, 1885, and January, 1886? And, if so, state such sales as may be within your knowledge and the prices at which they were sold.

A. I don't remember of any sales having been made during that time.

1575 Q. State if you have any knowledge of any property being sold near the property known as the east half of lot 10, block 28, in the city of Plattsmouth and now known as the Leonard property during September, October, November, and December, 1885, and January, 1886; and, if so, give the prices at which they were sold and a description of the property sold.

135 A. I do not remember of any having been sold in that vicinity during that time.

1576 Q. Do you remember the circumstances of the sale of the property that has been described in the several questions put to you as being the property of the Davis estate, made in December, 1885, and January, 1886? And, if so, state the facts within your knowledge relative to such circumstances of the sale and whether or not the property sold at its value on the market at that time.

A. I don't think I knew anything about the sale being made, but I heard of one wanting to be made and that the price was $4,000, but I don't know that any one wanted to buy it, but I knew it was for sale, but I did not know anything about the sale being made at all.

1577 Q. Do you remember of hearing about the time of the sale of the property and the prices at which it was sold, or have you any other knowledge relating to the price at which it was sold? And state whether or not the price at which it was sold was its value in the market at the time it was sold.

A. I heard about the price it was valued at before it was sold, and I heard about the sale being made at the same time it was made, and I was surprised it was sold for that amount of money, because it was hard to sell property at that time.

1578 Q. Did you hear the price at which it was sold at or about the time it was sold?

A. Yes, sir; I heard.

1579 Q. State what that price was.

A. I heard it was sold at $4,000.00.

1580 Q. State whether or not the price at which it was sold ($4,000) was the value of the property so sold upon the market at that time in its then condition.

A. Yes, sir; I believe that was its value at that time.

1581 Q. What, if any, conversation did you hear among the real-estate agents of the city of Plattsmouth and persons desiring

136 to purchase property in the city of Plattsmouth about the time this property was first offered for sale as its value on the market?

Plaintiff objects as irrelevant and immaterial.

1582 Q. I don't now remember of any conversation of real-estate agents about its value.

1583 Q. Do you remember of any conversation with anybody else other than real-estate agents as to the value of this property about the time it was sold with respect to its value as to whether it brought its value or not?

Plaintiff objects as irrelevant and immaterial.

A. Well, I am satisfied I had conversations with different persons, and I think Mr. Parmalee was one I had a conversation with, and my recollection is he told me before it was bought he did not want it for that price.

1584 Q. What value, if any, did Mr. Parmalee fix upon the prope-ty as being its value on the market?

A. I don't think he fixed any value; he only said he did not want it for four thousand dollars.

1585 Q. What other person, if any, who was dealing in real estate in the city of Plattsmouth at that time do you remember of having a conversation with, and what value, if any, was fixed upon it by such person?

Q. Plaintiff objects as irrelevant and immaterial.

A. I don't now remember of any conversation with any other person about it.

1586 Q. If you know what the general impression was among dealers in real estate or of real-estate agents as to the value of the property known as the property of the Davis estate at or about the months of September, October, November, and December, 1885, and January, 1886, state what that was, and state what, if any, knowledge you have respecting the general impression which existed between and among such parties as to whether this property sold at its value in the market when it was sold.

137 Plaintiff objects as incompetent, irrelevant, and immaterial.

A. I do not know as I can remember any of the persons or agents that I talked with, but I don't remember that there was any surprise expressed in any of the conversations at the price it was sold for.

1587 Q. Then, in your judgment as a real-estate agent and as a dealer in real estate at the time when this property was sold, did it or did it not bring its value in the market at the time when it was sold?

A. Yes, sir; I thought it brought or was sold for its full value when it sold for $4,000.00.

Cross-examination.

By JOSEPH R. CLARKSON:

1588 Q. Do you own any property in town?

A. I own the property where I live.

1589 Q. Where is that?

A. It is in the southwest part of town; it is in lots one and two, in block 48, Young & Hays' addition.

1590 Q. How many lots are there?

A. Two lots.

1591 Q. Did you own any property in 1885 or 1886 in Plattsmouth?

A. Yes, sir; I owned this property since 1867, I think.

1592 Q. During the fall of 1885 and the winter and spring of 1886 following did you make any purchases or sales of real estate?

A. I did not.

1593 Q. And such dealings as you had in real estate was for others?

A. Yes, sir.

1594 Q. About how many sales of real estate did you make in the last six months of 1885?

A. I don't remember that I made any.

1595 Q. About how many did you make in the first 3 months of 1886?

A. I don't remember that I made any.

138 1596 Q. As a preparation for this examination, you went to the records of Cass county and ascertained that sales were made at certain times and for certain prices according to the instruments on record, and from that memorandum you have been refreshing your memory?

Defendant objects as improper cross-examination and incompetent.

A. Yes, sir; I refreshed my memory with regard to sales that I remembered to have been made.

1597 Q. And apart from that memorandum and without looking at it, can you give the values of the sales you have been testifying to on your direct examination?

A. Yes, sir; I have given the values very nearly.

1598 Q. What especial interest did you have in the Davis estate, if any?

A. Not any.

1599 Q. How long prior to the sale in December, 1885, had you made an examination of the Davis property?

A. Well, I had known the piece of property from, perhaps, 1878, and I knew that property, I think, before Slater conveyed it to the estate or before it was mortgaged to Davis, and ever since I have been in the city I passed it and saw it every day or two.

1600 Q. Did you pass by and know the outlaying property of the Davis estate?

A. Yes, sir.

1601 Q. For what purpose?

A. Oh, once in every two or three weeks or every two or three months I would be showing property not far from it.

1602 Q. Had you any intercourse with the representatives of the Davis estate in the fall of 1885 or up to 1886?

A. No, sir.

139 1603 Q. Did you know of any desire in town to purchase it?

A. No, sir; I did not know of any desiring to purchase it.

1604 Q. Do you know Byron Clark, the gentleman sitting here?

A. Yes, sir.

1605 Q. Do you remember of having a conversation with Mr. Clark in the summer of 1889, in your office, with reference to the value of the Davis property in the winter of 1885 and 1886?

A. Yes, sir; he came to me to know what I remembered about the values of the property.

1606 Q. Did you not tell him in that conversation that you knew nothing about the value of that outside property?

A. I don't remember of any such thing.

1607 Q. Did you not tell him you were not familiar with the value of the outside property, but you knew the Main-street property pretty well?

A. No, sir.

1608 Q. And that you could not testify as to the value of that outside property?

A. I told him that I could not testify as to the value of the property being as much as he expected I ought to.

1609 Q. Then you did not say you did not know what it was?

A. I do not see how I could have said I did not know, as I had owned lots on the south side *that* and sold them some time before that, and I had passed that property quite frequently, and I sold property near the Polk property, and I certainly could not have said I did not know about it.

1610 Q. How long before had you sold the property you are now testifying about?

A. I don't know; in 1881, 1882, or 1883.

1611 Q. And upon the sales in 1881, 1882, or 1883 you base your idea of the value of the Davis property in December, 1885?

A. No, sir; the lots were sold very much lower in 1881 and 1882, and the lots I had were fair representative lots and they were
140 sold very much lower.

1612 Q. You say this property that you testify to selling once in 1881, 1882, or 1883 was fair representative property and it was sold at a low value. Where was that property?

A. They were lots in Micklewaite's addition and not very far from the Drummond property.

1613 Q. They were all in Micklewaite's addition and were good, level lots?

A. No, sir; they were on a hillside. I had a lot for sale right across from the Polk property in 1881. I don't remember whether it was in 1880 or in 1881, but it was along about that time; it was the south half three lots, and it sold for $125.

1614 Q. Do you know or did you know of the sale of lot 7, in block 3, from Dovey to Dovey on the 10th of April, 1885?

A. Is that where Dovey lives?

By Mr. CLARK: That is where he lives.

A. I remember something about the lot there; that was simply a deal in the family; they gave him the right to that lot.

1615 Q. Do you know what the circumstances were?

A. No, sir.

1616 Q. Did you know of the sale of lots 1 and 2, in block 3, from Fitzgerald to Houseworth on the 25th of August, 1884?

A. I heard of the sale being made.

1617 Q. What was the price?

A. I don't remember the price, but I remember it was high.

1618 Q. You remember it was a high figure?

A. Yes, sir; I recollect it was a high figure.

1619 Q. Do you know why Mr. Houseworth paid a high price for it?

A. I presume it was close to some others.

1620 Q. What sales did you make after 1881 or 1882 of any property?

A. It would be very hard to tell what sales I made without taking my book and looking it over.

141 1621 Q. You cannot recall any?

A. I can recall some few.

1622 Q. Well, recall some.

A. After 1881?

1623 Q. After 1881; yes, sir.

A. I think I sold lots in block 86, two lots for $75 or $100.

1624 Q. In the city of Plattsmouth?

A. Yes, sir; there were a number of lots in that vicinity were sold very low.

1625 Q. At what time?

A. I don't remember the exact dates; perhaps in 1881 or 1882.

1626 Q. What sales did you make as late as 1883 or 1884?

A. Of property?

1627 Q. Of any property here; yes, sir.

A. I think I sold some to Mr. Parmalee he bought of Kinkaid, perhaps, for 3 or 4 hundred dollars.

1628 Q. Where was that?

A. I don't remember which block it is, but it is west of this property, block 12, 11 or 12, or 10.

1629 Q. When was that sold?

A. I don't remember just the exact date.

1630 Q. Do you remember the year?

A. No, sir; but I think it was in 1884 or 1885.

1631 Q. What addition was it in?

A. I think, perhaps, Townsend's.

1632 Q. How far south from the Drummond and surveyor general's property?

A. 4 or 5 or, maybe, 6 blocks.

1633 Q. You spoke of the sale and purchase of Parmalee for $2,900. Is it not a fact that that man sold because he was leaving town on account of his health, and he sold at a sacrifice?

Defendants object as immaterial and irrelevant.

142 A. Yes, sir; I think it was a fact, but I don't know about the sale at a sacrifice.

1634 Q. Do you remember of his price being four thousand dollars?

A. Yes, sir; I reckon he asked a higher price than he sold at, and of course he sold for what he could get. He had been offering his property for sale for a good while before he did sell.

Redirect examination.

By G. W. COVELL:

1635 Q. When he did sell did he or did he not receive the value of his property on the market at that time?

A. Yes, sir; I think he did.

1636 Q. Taking into consideration the time when you say you made those sales of property you have enumerated, a part of them in 1881 and others in 1884, or at such times as you have stated and at the times you have enumerated, whatever they may be, state whether or not the values of the property at that time were higher or lower than in the latter part of the year 1885 and the early part of 1886 in Plattsmouth, Cass county, Nebraska.

Q. Prices were about the same along in 1885 and 1886 as they had been some time before, but sales were not as readily made after the small-pox had been here as they had been before that.

(Excused.)

V. V. LEONARD, a witness of lawful age, being first duly sworn, deposeth and sayeth as follows:

Examined by G. W. COVELL:

1637 Q. State your name, age, place of residence, and occupation.

A. My residence is Plattsmouth, Nebraska, and my age is 49.

1638 Q. How long have you resided in Plattsmouth, Cass Co., Nebr.?

A. 20 years in May.

1639 Q. Do you know the property known as the property of the Ella V. Davis estate, consisting of the east half of lot 10, in
143 block 28, and the west 20 feet of lot 12, in block 29?

A. That is the Main-street property.

1640 Q. Situated on Main street, Plattsmouth, Cass county, Nebraska, during the year 1885 and the early part of 1886; and, if so, state what was the value of each of these pieces of property in the market at that time.

Plaintiff objects for the reason that no foundation has been laid for the testimony.

A. I know the property.

1641 Q. Just state whether you knew its value.

A. I know what I think to be the value of it.

1642 Q. State the value of each piece of the property.

A. I cannot tell you the numbers of the property down there, but in my opinion it would be worth $1,000.

1643 Q. What do you mean by "down there"?

A. This Slater property; and the reason I mentioned that I could have bought White's property for $1,200.

1644 Q. Where is that?

A. It is in the same block, I think.

1645 Q. State the value of the other piece of property at that time in the market, if you knew it.

Plaintiff objects for the reason that no foundation has been laid for the testimony.

A. The other piece of property—the value of it was $1,500 or $1,600; I think $1,500.

1646 Q. In what way did you acquire any knowledge as to the values of these two pieces of property on the market at that time?

A. Both pieces of property were offered for sale that winter, and I purchased the other piece of property.

1647 Q. Which one?

A. The west half of lot——

1648 Q. The east half of lot 10, block 28?

A. Yes, sir.

144 1649 Q. State what knowledge, if any, you had respecting the property on which Mr. Polk now resides during the months of September, October, November, and December, 1885, and January, 1886; if you had any knowledge respecting its value, state what it was during that period of time.

Plaintiff objects as irrelevant, immaterial, and no foundation having been laid for the testimony.

A. The buildings that were on that property were not worth anything except for kindling wood. Lots in that vicinity were worth $75 to $100 each.

1650 Q. You may state if you knew the property which is now known as the Drummond property, being lots one to six, in block 8, White's addition, and lots 1 to 6, in block 89, of the city of Plattsmouth, all fractional lots, in the year 1885, say from September to December, 1885, and in the early part of the year 1886, say from January to April, inclusive; and, if so, state what the value of that property was at that time upon the market, and its condition, if you knew what it was.

Plaintiff objects as irrelevant, immaterial, and no foundation having been laid for the testimony.

A. I cannot tell you anything about the numbers of any of this property. If it is the Drummons property I cannot tell anything about the numbers.

1651 Q. Give us the value.

A. I stated before what I considered the value of this property to be. Some of the property is not worth hardly anything, except to be joined in with other property, if the purchaser had other property there; then there is some of the lots that would be worth something to him.

1652 Q. If these 12 lots, all taken together as fractional lots, would make up the sum of six full lots, and that property is the same property as that which Drummond now lives upon, what

145 would those six full lots have been worth at this time, if you know, upon the market?

Plaintiff objects as irrelevant, immaterial, and no foundation having been laid for the testimony.

A. It ought to be worth about $600.

1653 Q. How near this Drummond property do you live?

A. Within two blocks.

1654 Q. Which way from the Drummond property do you live?

A. Two blocks south of Drummond.

1655 Q. That is, you live two blocks south of the Drummond property and on the same street?

A. Yes, sir.

1656 Q. How long have you lived there?

A. Five years.

1657 Q. And if you have lived for 5 years within two blocks of the Drummond property you know pretty near the situation and value of the Drummond property during the — you have lived there?

A. I know the situation and I know very near the value of the property.

1658 Q. In what way have you fixed your value of that Drummond property?

A. I don't know how to answer that.

1659 Q. Answer it as near as you can.

A. I have traded some property on that hill. I traded property, sold property, and bought property.

1660 Q. Was the property you traded for and sold and bought lying in the vicinity of the property known as the Drummond property?

A. It is more valuable than that property.

1661 Q. As you come from the Drummond property south towards Main street state whether or not property is more valuable.

A. Yes, sir; it is. At that time it was a great deal more valuable and there was more difference, a great deal, — than there is now.

146 1662 Q. You may state if you knew in the year 1885 the situation and value of the property known as the surveyor general's property, say from September to December, inclusive, and the early part of the year 1886, say from January to April, inclusive; and, if so, state what that value was upon the market.

A. I have known that property ever since I have been in the city and I knew its location and value, and with the class of buildings that were on there it would not have been worth hardly anything.

Plaintiff moves to strike out the answer of the witness as not responsive.

A. There is 12 lots there.

1663 Q. Six lots; lots one to six, inclusive.

A. Well, I bought some property about that time, and at the time I bought the property up there in that vicinity I would not have paid over $600 for them.

Plaintiff moves to strike out the answer of the witness as not responsive to the question.

1664 Q. State whether or not $600 was the value of that property in its then condition upon the market in this town, according to *to* your best judgment.

A. With the building on there I should think the value of that would be nearly $1,000.00.

1665 Q. At what time?

A. In 1885.

1666 Q. In giving your answer as to the value of that property with the buildings on it state whether or not you had reference to the latter part of the year 1885—say in December, 1885.

A. The values had not changed any for a year; yes, sir.

147 Cross-examination.

By JOSEPH R. CLARKSON:

1667 Q. You say you were offered the two Main-street lots of the Davis estate in the winter of 1885?

A. Yes, sir.

1668 Q. Who offered that to you?

A. The winter of 1885—do you mean after the 1st of January?

1669 Q. I refer to December, 1885, and January, 1886.

A. You refer to both those months?

1670 Q. Yes, sir; to that winter.

A. Yes, sir. E. E. White offered me this lot that joined me—that is, the west half of the same lot—the east half of the same lot. Mr. White offered me that property for $1,200.00 before January of that year.

1671 Q. Before the first of January, 1885 or 1886?

A. Before January 1st, 1885.

1672 Q. Were you the owner of the west half of lot 12, block 29?

A. If that is the White property.

1673 Q. That is the Slater property.

A. No, sir; I was not the owner of that. I was just offered the White property.

1674 Q. What, if any, of the Davis property, other than the place where you now have your photograph galle-y, was offered to you during the fall of 1885 and the winter of 1885 and 1886?

A. Why, it was not offered to me because I did not want to buy it, but I asked the price of those three lots west of Drummond's. I think there was 3 lots there, and it was offered to me—I think it was—for $300.00.

1675 Q. By whom?

A. By Mr. Polk, I think.

1676 Q. Can you fix the date of that?

A. I cannot fix the date, but, whatever the value was, I
148 would not give it, and I think it was $300.

1677 Q. Was there any other offer of the Davis property made to you?

A. Not any.

Redirect examination.

By G. W. COVELL:

1678 Q. What do you mean by the property west of Drummond's? Was it a part of what is now known as the Drummond property?
A. No, sir.
1679 Q. Was it that upon which Mr. Polk lives?
A. No, sir.
1680 Q. Do you know whether or not those lots were situated in block 8 of White's addition to the city of Plattsmouth?
A. I do not. It is next to 6th street. I don't know the numbers.
1681 Q. Which way are they situated from Drummond's house?
A. West.

(Excused.)

L. C. STILES, a witness of lawful age, being first duly sworn, deposeth and says as follows:

Examined by G. W. COVELL:

1682 Q. You may state your name, age, place of residence, and occupation.
A. L. C. Stiles; 57 years old; residence, Plattsmouth, Cass county, Nebraska, and occupation printer.
1683 Q. How long have you resided in Plattsmouth, Cass county, Nebraska?
A. It was 20 years last April.
1684 Q. How long have you known the property known as the property belonging to the Davis estate?
A. I think I had been here a year or two before I knew it, but I knew the surveyor general's property and the other property belonging to the Davis estate after I was here only a short time.
1685 Q. You may state how familiar you were with the
149 situation and condition of the several pieces of property that were said to belong to that estate and for what length of time you were familiar with it, if at all.
A. Why, I knew the property and the location of most of it probably for 14 years.
1686 Q. You may state if you have known the values of that property and what it was worth upon the market during the most of the time that you have known the situation and condition of the property; and, if so, state how you acquired your knowledge of its values and worth upon the market.
A. Well, the way I knew anything about the value was what other property was selling for around it and the transactions I would hear of, and I remember of the sale of a good many. I recollect, but I could not tell what year it was, of being up to the surveyor general's property with some parties to look at it and see what they would give for it and what it was worth, and one person—I cannot think now who it was—said that the way property

was selling around he would not like to give over nine hundred dollars for it, considering the location of a disreputable house close to it.

1687 Q. How near to the surveyor general's property was there a disreputable house, a house of ill fame, located in the year 1885, if there was any such in there at that time?

A. It is right across the street. All I know of it is what I hear. I don't know of my own knowledge of any, but it has the reputation of one.

1688 Q. To what house of ill fame do you have reference?

A. To Mrs. Ingles'.

1689 Q. By what name does the woman go that keeps that here in Plattsmouth?

A. She has the reputation of keeping a disreputable house.

1690 Q. Under what name? Maud Emery?

150 A. No. Maud Emery is a block further north. It is Mrs. Engles.

1691 Q. How long was a house of ill fame kept up there, according to common report?

A. It must be at least 12 or 13 years; ever since Ingles left here, I guess.

1692 Q. Is it there still and carried on yet?

A. That I don't know so much about during the last year.

1693 Q. How was it during 1885?

A. There was a good many people visited the house for some purpose.

1694 Q. Taking into consideration the situation and surroundings of the surveyor general's property there, what was its value upon the market, say, from the first of September, 1885, to the latter part of December, 1885, and from January first to April 30th, 1886?

Plaintiff objects for the reason the witness has not shown himself competent to judge of the values of real estate sufficiently to express an opinion.

A. I don't think that can be worth over 8 or 9 hundred dollars.

1695 Q. How do you fix the value of that property—in what way?

A. Principally from 2 or 3 that were looking around to buy property and stating the amounts they would offer under the circumstances for that property.

1696 Q. You may state if you know the property that is now called the Drummond property and if you knew it in the year 1885, which property consists of lots one to six, inclusive, in block 89, in Plattsmouth, all fractional lots, and if you knew the situation and condition of that property and its value upon the market. State what it was in the year 1885, from September to December, inclusive, and from January, 1886, to April, inclusive.

Plaintiff objects for the reason that the witness has not shown himself competent to judge of the values of real estate sufficiently to express an opinion.

151 A. I did not know it then, but I knew there was some lots that belonged to the estate and I knew the location, and I knew some parties—Henry Hempel, I think, and somebody else—went up and bought lots pretty near there at $50 apiece—full lots, 44 by 140 feet, I believe. That is my understanding, though they might not have been full lots.

1697 Q. Taking the fractional lots altogether and getting a full lot of them, what was their market value, according to your judgment at that time, considering the fractional lots altogether made six full lots?

Plaintiff objects for the reason the witness has not shown himself competent to judge of the values of real estate sufficiently to express an opinion.

A. At that time, according to my remembrance, they would not be worth over $50 or $60 apiece, selling for money.

1698 Q. Do you know the situation, condition, and value in the market of the property now occupied by Milton D. Polk, as a residence property, consisting of lots 7 to 12, inclusive, in block 5, White's addition, in the year 1885? And, if so, state the value of that property, in its then condition, upon the market from September to December, inclusive, 1885, and from January, 1886, to April, inclusive, of that year.

A. Plaintiff objects for the reason that the witness has not shown himself competent to judge of the values of real estate sufficiently to express an opinion.

A. I frequently walked up 6th street. I could not tell as to the year. I went up there every year since I have been here, and I noticed the houses were all going down, and at one time—it seems to me for a year or more—they was not occupied and they were in very bad condition, and the way they were I would consider the lots worth $100 apiece, according to my best judgment.

1691 Q. What were the houses worth on the lots?

152 A. I would consider the lots worth just as much without the houses.

1700 Q. Taking the lots with the old houses on, what would they be worth?

A. I would not put the value at over $100 apiece.

1701 Q. In your best judgment, would those two old houses and those lots jointly have sold on the market in the year 1885 or at any time in the winter or spring of 1886, the first 4 months of that year, for more than $800?

A. I don't think they would.

1702 Q. You would say, in your judgment and from your knowledge of the property and its situation and condition, that $800 would be the value of that property upon the market?

A. I would think it would be all it was worth in the market at that time, as near as I can fix the time. I have been trying to fix some date, but I cannot fix any, but I remember it was a dull time,

and I remember of different properties being offered for sale very cheap.

1703 Q. Do you remember the time the small-pox was abroad here in Plattsmouth? And, if so, state what year it was.

A. I remember the time very well, but cannot fix the year. I sent my family at that time to Ohio, but I cannot tell the year.

1704 Q. State whether or not you know the property that is now called the Slater property on Main street, in Plattsmouth, in block 29, in the city of Plattsmouth.

A. Yes, sir.

1705 Q. Being the west 20 feet of — 12, in block 29, during the year 1885 and the early part of the year 1886; and, if so, you may state what the condition of it was at that time and what its value was upon the market, if you know.

153 Plaintiff objects for the reason that the witness has not shown himself competent to testify as to the values of real estate.

A. Well, the condition of it—there was a small building on it, I should say probably 30 by 40 feet long—a one-story structure—which had been built a good many years. I think the building was built either in 1871 or 1872, on the corner, and then moved on that lot, if I remember right, and the value of that in those times would not be over $1,100 or $1,200.

1706 Q. You may state, if you know, the situation, condition, and value of the property known now as the Leonard property, where Leonard's gallery is, during the latter part of the year 1885, say from September to December, inclusive, and the early part of the year 1886, from January to April, inclusive; and, if so, state what the value of that property was upon the market, taking into consideration that the property was one foot short of being a full business lot.

A. There was no buildings on it. As I stated before, I cannot fix the year, but I think there was building on it that year, and I would say that it was probably worth $1,300 or $1,400.00.

1707 Q. State whether or not there had been a building on it; and, if so, what had become of it.

A. I think it was covered with a building at one time and it was burned.

1708 Q. How long have you known this property, altogether, as being the property of the Ella V. Davis estate?

A. Why, I think it was 16 or 17 years since she came here and I learned who she was and what property she owned.

1709 Q. How did you learn it?

A. Why, through Thomas W. Shryock, where she was stopping. I think I had an introduction to her. I was talking some of selling my property in the south part of town and getting a piece north of Main street and I made some inquiries around about it.

154 1710 Q. You may state what all this property, taken altogether in a body, would have been worth, from your knowledge of the property and its situation and condition,

in cash, upon the market, in the year 1885, say from September to December, inclusive, in 1885, and say from January to April, inclusive, of 1886.

Plaintiff objects for the reason that the witness has not shown himself competent to testify as to the values of real estate.

A. Any time along in those years for three or four years together a lot of property of that kind, I think, would be worth 20 per cent. less than the value I have fixed upon it, taking it altogether.

1711 Q. Do you remember of hearing of the transaction of the sale of this property altogether about December, 1885; and, if so, what the property was then sold for; and, if you remember that transaction, you may state whether or not the price for which the property was sold for was the fair value in cash on the market.

A. I did hear of it and I heard it talked of considerably, still I cannot give the names, but I have heard a number remark that Mr. Polk was stuck and he would never get his money out of it.

1712 Q. What was the amount which the property was said to have sold for, if you remember, altogether?

A. Why, my memory was it was $4,100, or something over $4,000.

1713 Q. You may state whether or not the price it was said to have been sold for was a fair value on the market.

A. It was so considered by all I heard talk about it, and I heard a good many talk about it.

1714 Q. From your knowledge of the situation and condition of the property at that time do you think the price for which it was sold was the fair market value of the property?

A. Why, I think it brought all it was worth at that time.

1715 Q. You may state whether or not the value of that property was more or less than $4,000 in the year 1885 and in the early part of the year 1886.

155 A. At the time the transaction took place my momory is it was $4,100, but I would not swear positively and I did not personally know, but my judgment is it brought all it was worth at that time, taking it in a body.

Cross-examination.

By JOSEPH R. CLARKSON:

1716 Q. What was your business the last 6 months of 1885?

A. I was in the Herald office at that time.

1717 Q. What was your business the first 3 months of 1886?

A. I was in the office at that time also—the Herald office.

1718 Q. Up to May, 1886, had you ever dealt in real estate in Plattsmouth?

A. I never had made any deals in real estate only for myself.

1719 Q. What had been the extent of your dealings?

A. I only had bought two lots.

1720 Q. When did you buy those?

A. I bought one in 1869 and the other in 1881 or 1882—1881, I think.

1721 Q. Did you sell them?

A. Only the one I bought first.

1722 Q. When did you sell the lot you bought in 1869?

A. Well, I could not tell you the year it was; it was appraised by the railroad company.

1723 Q. By condemnation proceedings for right of way?

A. Yes, sir.

1724 Q. What occasion have you had to price real estate in this city?

A. All the occasion I had was to try to make a change for the better for myself when I could see it.

1725 Q. You wanted to sell out and buy elsewhere?

A. Yes, sir.

1726 Q. Did you ever try to make any purchases here apart from those two lots?

A. I never made any offers, but I inquired the prices and
156 found about how prices stood.

1727 Q. When did you make those inquiries?

A. Almost every year since I have been here I inquired; I asked Mr. Parmalee sometimes what he would take for locations up around here, and I asked one or two others.

1728 Q. At the time you made those inquiries, did you have an intention to buy property?

A. Yes, sir.

1729 Q. For what purpose—that of residence or speculation?

A. Residence; I made Mr. Parmalee an offer for the two lots.

1730 Q. You never made inquiries with reference to buying and reselling the property to make money on it, did you?

A. Not with that anticipation; no, sir.

1731 Q. What was your business the last six months of 1885?

A. I was in the printing office.

1732 Q. Was you supporter of Mr. Polk in the last compaign for the senate?

Defendants object as immaterial and not proper cross-examination.

A. Yes, sir.

Defendants move to strike out the answer of the witness as improper, immaterial, irrelevant, and incompetent.

1733 Q. Have you any bias or prejudice in this case?

A. Not a particle.

1734 Q. When Mr. Polk went to the senate, were you down there in any capacity to assist him?

A. No, sir.

1735 Q. Were you not connected with his committee?

A. No, sir.

1736 Q. What office, if any, did you have in the senate or house during his term of office?

A. I had a position in the judiciary committee room as janitor.

1737 Q. What year was that?

157 A. It was this last winter.

1738 Q. Who procured that position for you?

A. I consider I did. I did the principal part myself, sir.

1739 Q. Did not Mr. Polk get it for you?

A. No, sir; nor directly.

1740 Q. Did he indirectly?

A. I presume he spoke in my behalf, but I got the position, I consider, myself.

(Excused.)

JOHN WATERMAN, a witness of lawful age, being first duly sworn, deposeth and sayeth as follows:

Examined by G. W. COVELL:

1741 Q. Give your name, age, place of residence, and occupation.

A. I reside in Plattsmouth; am 53 years old; am a lumber dealer, and my name is John Waterman.

1742 Q. How long have you lived in Plattsmouth, Cass Co., Nebraska?

A. Since 1870.

1743 Q. During the time you have lived in Plattsmouth, Cass county, Nebraska, have you bought and sold real estate?

A. I have.

1744 Q. To what extent?

A. I bought several lots.

1745 Q. Where are they situated in Plattsmouth?

A. Well, I bought some lots right opposite to where Mr. Polk now lives.

1746 Q. When did you buy those and, if you have sold them, when did you sell them?

A. I sold the lots for $50 apiece.

1747 Q. State whether or not you have purchased any on Main street, in Plattsmouth, during that time.

158 A. I purchased where the opera-house now stands.

1748 Q. Are you the owner of the opera-house in this city?

A. Yes, sir.

1749 Q. When did you purchase the lots on which it stands?

A. In 1881.

1750 Q. Where are they situated with reference to the property known as the Slater property?

A. They are right opposite.

1751 Q. You may state whether or not you have purchased property *property* in any other portions of the city, say anywhere near the surveyor general's property, at any time.

A. I have not.

1752 Q. Have you purrchased property anywhere in the vicinity

of the property known as the Drummond property, say, within 4 years last past?

A. I could not say.

1753 Q. You may state whether or not you have been familiar during that time that you have lived in Plattsmouth with the property known as the Ella V. Davis estate and its condition; and, if so, and if you became familiar with its condition and if you knew its value, you may state how you became familiar with the values of the pieces of property belonging to that estate.

A. Well, I have been in the house of the surveyor general and all around it and saw its condition.

1754 Q. And the other pieces of property, how did you become acquainted with them.

A. Well, I sold the lumber for the other two houses where Mr. Polk now lives and I was up there occasionally and have seen them since.

1755 Q. You may state whether or not you were acquainted with the values of the several pieces of property belonging to the Ella V. Davis estate in the year 1885—say September to Decem-
159 ber, inclusive, and from January to April, inclusive, 1886.

A. I was.

1756 Q. You may state, taking the property known as the Slater property, which is described as the west 20 feet of lot 12, in block 29, in the city of Plattsmouth, what its value was upon the market in the year 1885, from September to December, inclusive, and the year 1886, from January to April, inclusive.

Plaintiff objects for the reason that the witness has not shown himself competent to judge of the values of real estate, irrelevant, and immaterial.

A. $1,000.00.

1757 Q. During that time did you know the property which is now called the Leonard property and described as the east half of lot 10, in block 28, in the city of Plattsmouth, and its then condition, and did you know its value? And, if so, state what that value was, the condition of the lot, and altogether.

Plaintiff objects for the reason that the witness has not shown himself competent to judge of the values of real estate and irrelevant and immaterial.

A. I did, and it was worth $1,200.

1758 Q. You may state whether or not you knew the property which is now known as the Drummond property, consisting of lots one to six, inclusive, in block 8, White's addition, and lots 1 to 6, inclusive, in block 89, of the city of Plattsmouth, all being fractional lots, and all taken together, being 6 full lots, and if you knew their value at the time mentioned in 1885 or 1886 state what the value of those lots was.

Plaintiff objects for the reason that the witness has not shown himself competent to judge of the values of real estate, irrelevant, and incompetent.

A. I think $500 would be a fair valuation.

1759 Q. You may state whether or not you knew the con-
160 dition and situation and value of the property known as the surveyor general's property, consisting of lots 1 to 6, in block 2, in Plattsmouth, in the year 1885, say from September to December, inclusive, and the year 1886, from January to April, inclusive; and, if so, state what the value of that property was upon the market at that time.

Q. I think the value was $1,000.00.

1760 Q. You may state if you know the property which is now called the Polk property, that upon which Mr. Polk lives, consisting of lots 7 to 12, inclusive, in block 5, of White's addition to the city of Plattsmouth, from September to December, 1885, and from January to April, inclusive, of 1886; and, if so, state what the value of that property was and its condition at that time, if you knew the condition at that time.

A. It was worth $600.

1761 Q. Do you remember this property which I have enumerated to you in the questions put to you and belonging to the estate of Ella V. Davis having been sold in December, 1885; and, if so, do you remember the price at which it was sold? And, if you remember the price, you may state whether or not the price at which it was sold, all taken together, was the value, the fair cash value, of that property, all taken together, on the market in Plattsmouth.

Plaintiff objects for the reason the witness has not shown himself competent to judge of the values of real estate, irrelevant, and incompetent.

A. I can answer that I did not know it was sold till, I guess, some time this spring. I did not know it was sold till this spring.

1762 Q. What did you hear, if anything, about the price at which it was sold?

A. I heard parties this spring talking on the streets about it.

1763 Q. What, in your judgment, taking all that property together, from your knowledge of the property and its then
161 condition and situation, would have been the fair cash valuation for the whole body of that property if it had been sold in December, 1885, upon the market?

Plaintiff objects for the reason the witness has not shown himself competent to judge of the values of real estate, and as irrelevant and incompetent.

A. I should say $4,000, taking it altogether.

Cross-examination.

By JOSEPH R. CLARKSON:

1764 Q. Have you ever speculated in Plattsmouth property?

A. I have not—that is, I never bought for the purpose of selling again.

1765 Q. You are a defendant in this suit, are you not?

A. No, sir; I haven't a dollar in it. I did have lien upon these lots, but that is all settled.

1766 Q. I think you are a party defendant, are you not?

A. I think we are.

1767 Q. Then, your answer would be yes to the first question?

A. We haven't got anything to do with it now. When we got our money that ended it.

1768 Q. Is your firm H. A. Waterman & Co.?

A. Yes, sir.

1769 Q. While you have been testifying you have been consulting a memorandum?

A. I have.

1770 Q. When was that made out?

A. To-day.

1771 Q. It is not made out from anything that occurred in 1885 or 1886?

A. I did not know anything about that sale, as I told you, until this spring.

(Excused.)

162 HENRY BONS, a witness of lawful age, being first duly sworn, deposeth and sayeth as follows:

Examined by Mr. COVELL:

1772 Q. You may state your name, age, place of residence, and occupation.

A. My name is Henry Bons; age is 38 years, and my residence is Plattsmouth.

1773 Q. The city of Plattsmouth, Cass county, Nebraska?

A. Yes, sir.

1774 Q. How long have you lived in the city of Plattsmouth, Cass county, Nebraska?

A. Since 1868, with the exception of 3 years.

1775 Q. What year did you leave Plattsmouth?

A. I left in September, 1886.

1776 Q. And when did you come back?

A. In 1889.

1777 Q. State whether or not during the time you lived in Plattsmouth, from 1868 to 1886, you dealt any in property in the city of Plattsmouth—bought and sold any real estate.

A. I owned property and bought some for business purposes—to make brick on—and afterwards sold it.

1778 Q. You may state whether or not you knew the pieces of property belonging to the Ella V. Davis estate in the year 1885 and how long you had known that property prior to 1885, and what its condition was during the time you knew it with reference to location and with reference to its being rentable, and whether or not there were any improvements on it.

A. I don't know where this property is, only by information.

1779 Q. Do you know the property that is called the surveyor general's property?

A. Yes, sir.

1780 Q. How long have you known that?

163 A. Since 1868.

1781 Q. And situation and condition have you since that time?

A. I have; yes, sir.

1782 Q. Did you know then, and how long have you known, the property that is now called the Drummond property?

Q. That property lies up on the hill here.

1783 Q. Where Drummond lives?

A. Where Drummond lives?

1784 Q. Yes, sir.

A. I know that property; yes, sir.

1785 Q. How long have you known that property?

A. I cannot tell exactly. I have known it and have hunted on it.

1786 Q. Did you know the property that Mr. Polk now lives on in the year 1885; and, if so, how long prior to that time had you known the property?

A. I have known that since 1868, and I knew it better since they built this house on it.

1787 Q. Did you know the property on Main street, in Plattsmouth, that is called the Slater property in the year 1885; and, if so, how long prior to that time did you know the property?

A. I have known that property since 1868.

1788 Q. Did you know the property that is now called the Leonard property, on which Leonard's photograph gallery is situated, in the year 1885; and, if so, how long prior to the year 1885 did you know that property?

A. I have known it ever since 1868.

1789 Q. Are you familiar with what these pieces of property were worth on the market during the year 1885?

A. Why, I knew something about the values of property then.

1790 Q. How did you acquire your knowledge of the values of property at that time?

A. I knew it from property that I sold about that time.

164 1791 Q. Where was the property that you owned and th you sold in 1885?

A. On the corner of Polk and 4th streets,

1792 Q. Whereabouts was that situated with reference to the surveyor general's property?

A. It lay about 2 blocks nearer Main street, but it did not lie quite as level as the surveyor general's property.

1793 Q. In what month did you sell that property in 1885? Was it the early part or the latter part of the year?

A. I guess it was the first part of the year.

1794 Q. You may state what price you sold that property for.

Plaintiff objects as immaterial and irrelevant.

A. $75 a lot. I sold 3 lots for $225.

1795 Q. You may state whether or not the 3 lots that you sold

for $225 were more or less valuable than the lots on which Mr. Drummond now lives before they were improved.

Plaintiff objects for the reason that the witness has not shown himself competent to judge of real-estate values, and as irrelevant and incompetent and immaterial.

A. I think they were about the same.

1796 Q. Do you know the value of the Slater property in the market in December, 1885? And if so, state what that value was.

Plaintiff objects for the reason that the witness has not shown himself competent to judge of real-estate values, and as irrelevant and immaterial.

A. I should judge that property was worth in the neighborhood of 10 or 12 hundred dollars.

1797 Q. State, if you know, the value in 1885, in December, 1885, of the property known as the Leonard property, on Main street, on which his gallery is situated; and, if so, state what was the fair market value of that property in cash in December, 1885.

Plaintiff objects for the reason that the witness has not
165 shown himself competent to judge of real-estate values, and as irrelevant and immaterial.

A. Well, I should judge 14 or 15 hundred dollars.

1798 Q. Now, do you know the fair market value of the surveyor general's property in December, 1885? And, if so, state what the fair market value of that property was, taking into consideration its situation and condition, etc.

Plaintiff objects for the reason the witness has not shown himself competent to judge of real-estate values, and as irrelevant and immaterial.

A. How many lots are there?

1790 Q. Lots 1 to 6, in block 2, in Plattsmouth.

A. Including the buildings?

1800 Q. Yes, sir.

A. The lots are not worth any more than the lots I sold.

1801 Q. Taking those lots without the buildings, what were they worth in December, 1885?

A. About $75 a lot.

1802 Q. Did you know the condition of the houses at that time?

A. Yes, sir.

1803 Q. Well, taking the houses together with the lots, considering the condition of the houses at that time, state the fair cash value of the houses and lots known as the surveyor general's property.

A. The houses would not make the property any more valuable; they would not improve the property.

1804 Q. Give some value such as would be a fair cash value.

A. I suppose there were 5 thousand brick in the houses and they would be worth $4 a thousand. The houses were not worth much.

1805 Q. Do you know the fair cash value of the property known as the Drummond property, consisting of fractional lots 1 to 6, inclusive, in block 8, White's addition, and lots 1 to 6, inclu-
166 sive, in block 89, in Plattsmouth proper—the 12 lots making about 6 full lots—in December, 1885? And, if so, state what you consider those lots to have been worth, in the condition that they then were, in cash upon the market.

Plaintiff objects for the reason the witness has now shown himself competent to judge as to the values of real estate, and as irrelevant and immaterial.

A. $75 a lot.

1806 Q. In making this answer do you take the 12 lots or the 6 full lots and give the valuation of each fractional lot at $75 per lot?

A. I treat them as 6 full lots.

1807 Q. State if you knew in December, 1885, the fair cash value of the property Mr. Polk now lives upon and known as lots 7 to 12, in block 5, in White's addition, taking into consideration the condition of the property at that time, and state the fair cash market value of that property at that time, say in December, 1885.

Plaintiff objects for the reason that no foundation has been laid for the question and the witness not having shown himself familiar with the values of real estate, and irrelevant and immaterial.

A. How many lots is that—5 or 6?

1808 Q. Six lots.

A. Why, I think that property is worth about 80 or 90 dollars a lot.

1809 Q. In fixing this valuation have you taken into consideration the old buildings that were situated on those lots at that time?

A. Yes, sir.

1810 Q. Did you know the condition of those two old buildings at that time? And, if so, state what it was.

A. They were in very poor condition at that time.

1811 Q. Did you know the condition of the buildings?

A. Yes, sir; a man named White lived there, and I went to see him.

167 1812 Q. And then you looked at the buildings?

A. Yes, sir; I happened to notice them.

1813 Q. What were those buildings worth aside from the valuation you placed on the lots, if anything, and whether the lots were more valuable with the buildings on them than they would be with the buildings off?

Plaintiff objects for the reason there is no foundation laid for the introduction of this testimony and the witness has not shown himself competent to judge as to the value of real estate, and as irrelevant and immaterial.

A. I don't think they were.

Cross-examination.

By JOSEPH R. CLARKSON:

1814 Q. What business were you in during the year 1885?

A. I was working, I think, for the B. & M. Company. In 1884 I made brick, and in 1885 I worked for the B. & M. Company as a clerk.

1815 Q. What was your business in 1884?

A. Brick manufacturer.

1816 Q. In 1883?

A. Brick manufacturer.

1817 Q. What was it in 1886?

A. I was in the saloon business, I think. I started in the saloon business in 1885.

1818 Q. What time in 1885?

A. I am not sure about those dates exactly. I guess I was mistaken about the dates. I think I had been working for the railroad company in 1883, and I went from there into the saloon business, and was in it from 1883 to 1886.

1819 Q. When did you sell your brick yard?

A. In 1885.

1820 Q. At what time?

A. I think in the early part of the year.

168 1821 Q. When did you buy it?

A. It was about February I sold it, and we bought it in 1881 or 1880.

1822 Q. Apart from the brick-yard transaction, what real-estate dealings have you had in Plattsmouth since 1883?

A. I had a lot—an interest in a lot—on Main street, on this side of Waterman's opera-house, and I sold it in 1887 or 1888. I think I sold it in the fall of 1887.

1823 Q. When did you buy it?

A. I cannot exactly recollect it, but we bought it for brick.

1824 Q. What lot was it?

A. It was the Sherwood lot.

1825 Q. Can you give the number of the lot and the block in which they were situated?

A. No, sir. Really I forget the numbers.

1826 Q. Of the brick-yards lots, I mean.

A. I think it was 1, 2, 3, and 4, and I forget the number of the block.

1827 Q. Have you ever speculated in Plattsmouth real estate?

A. I never bought any for speculative purposes.

1828 Q. And what you have bought was for residence property?

A. Yes, sir.

1829 Q. And these dealings that you have had were all since 1882?

A. Yes, sir. You might call this lot we bought for brick was for speculation. It was really to get rid of the brick, and we did not buy that to build on or to use, but to sell it, and you might call it for speculation.

1830 Q. Do people ever come to you to inquire after your opinion as to real-estate values?

A. They have not exactly been coming to me.

Redirect examination.

By G. W. COVELL:

169 1831 Q. The property that you bought and paid for with brick and afterwards sold, in 1887, near the Waterman opera-house, was purchased by you when?

A. I am not positive.

1832 Q. About what year?

A. 1883 or 1884.

1833 Q. You may state whether or not the property in 1887 here in Plattsmouth was more or less valuable in the market and more or less active in being purchased and sold in 1887 than at any time in 1885.

Plaintiff objects for the reason that the witness has not shown himself competent to judge of real-estate values, and irrelevant and immaterial.

A. It was more valuable in 1887 than in 1885.

1834 Q. What time was it or in what year was it that property began to increase in value after 1885?

A. It commenced increasing when I sold my property, and I think that was the latter part of 1886 or the beginning of 1887.

1835 Q. What caused it to increase in value?

A. I was not living here, but I think they called it the Mercer boom.

(Excused.)

H. C. RITCHIE, a witness of lawful age, being first duly sworn, deposeth and sayeth as follows:

Examined by Mr. COVELL:

1836 Q. Give your name, age, place of residence, and occupation.

A. My name is H. C. Ritchie; I am in the real-estate and loan business; I am 40 years old and reside in Plattsmouth.

1837 Q. How long have you resided in Plattsmouth?

A. Six years.

1838 Q. In what business have you been engaged during that time?

170 A. Abstractor of property and real estate.

1839 Q. State whether or not you have dealt in real estate during that time to any extent; and, if so, to what extent?

A. Not for myself.

1840 Q. You may state whether or not you have sold property for others to any extent during that time; and, if so, to what extent?

A. I have, sir.

1841 Q. State if you have been familiar with the value of real estate in Plattsmouth and its additions during the time you have been in

the abstracting and loan business; and, if so, in what way you acquired your knowledge of such values.

A. Why, the way my knowledge of the value of real estate is acquired was from abstracting and from purchases of property made by the building and loan association in Plattsmouth. We are examiners of title for them in their business.

1842 Q. How long have you been examiners of title for the building & loan association?

A. Three years.

1843 Q. Prior to the year 1886 were you engaged in the business of examining titles and loaning money, or not?

A. No, sir; I was in the clerk's office.

1844 Q. What clerk's office?

A. The county clerk.

1845 Q. In what position?

A. I was a clerk there.

1846 Q. Were you then familiar with the values of real estate in Plattsmouth?

A. In 1885 I was in the county clerk's office.

1847 Q. Were you, in the year 1885, familiar with the values of real estate in the city of Plattsmouth and its several additions?

A. Why, yes.

1848 Q. In what way did you acquire your knowledge of
171 the values of real estate within Plattsmouth?

A. By the sales and transfers that were made.

1849 Q. Did you know the property that is called the property of the Ella V. Davis estate during the year 1885; and, if so, did you know its then condition?

A. I knew its location and a part of its condition.

1850 Q. You may state whether or not during the year 1885 you knew the property that is called the Slater property, being the west 20 feet of lot 12, in block 29, in the city of Plattsmouth proper; and, if so, what its condition was at that time?

A. Yes, sir; it was vacant. That is the Slater property, isn't it?

1851 Q. Yes sir.

A. I think there was a frame building there, but that was a vacant lot, if I remember right.

1852 Q. What was the value of that property?

A. Block 29 is the next block here——

1853 Q. Did you know the value of that property as it was then situated in the year 1885, say from September to December, inclusive, and the early part of 1886, from January to April, inclusive; and, if so, what was the fair market value of that property?

Plaintiff objects for the reason the witness has not shown himself competent to pass an opinion as to the values of real estate, and as irrelevant and immaterial.

A. It was just about a thousand dollars.

1854 Q. Did you know the value of the property that is now occupied by Leonard as a photograph gallery, being the east half of lot 10, in block 28, in the city of Plattsmouth proper, in the year

1885, say from September to December, inclusive, and in they ear 1886, say from January to April, inclusive? And, if so, state what the fair cash market value of that property was during that period.

Plaintiff objects for the reason that the witness has not shown himself competent to pass an opinion as to the values of real
172 estate, and as irrelevant and immaterial.

A. Yes, sir. We made Leonard a loan on that property of $2,000 in 1886, and our valuation of that was $1,500.

Plaintiff moved to strike out the answer as not responsive to the question.

1855 Q. What was the fair market value of that property during the time mentioned by me in the previous question?

A. Not to exceed $1,500.

1856 Q. When you made the loan which you have mentioned in your previous answer to Mr. Leonard in what condition, as to buildings, was the property?

A. The property was vacant.

1857 Q. When you made the loan?

A. No; there was no building upon it. This $2,000 mortgage was given to get money to build with, and the build- was afterwards put up.

1858 Q. Had there been a building upon the property, if you know, prior to the year 1885; and, if so, what had become of it?

A. I don't know. There was not any in 1885.

1859 Q. Did you know the property that is now called the Drummond property, consisting of lots 1 to 6, inclusive, in block 8, White's addition, fractional lots, and lots 1 to 6, inclusive, in block 89, Plattsmouth proper, fractional lots, during the year 1885, say from September to December, inclusive, and the early part of the year 1886, say from January 1st to April, inclusive? And, if so, state what the fair market value of that property was during that time, taking into consideration the fact that these 12 fractional lots make about six full lots.

Plaintiff objects for the reason the witness has not shown himself to be competent to judge of the values of real estate, and as irrelevant and immaterial.

A. I know the property, and I knew at that time. The
173 lots would be worth about $100 apiece, judging from what the property sold adjoining.

1860 Q. Is this valuation based upon the fractional lots or upon the 6 full lots?

A. Upon the six full lots.

1861 Q. Then, taking these 12 fractional lots altogether, what would be the value of that property upon the market at that time?

A. About 6 or 7 hundred dollars.

1862 Q. Did you know the property now occupied by Mr. Polk during that period—during 1885 and 1886?

A. That is, the south half of block five?

1863 Q. Yes, sir; in White's addition. State whether or not you knew it.

A. Yes, sir.

1864 Q. If you, then, knew the value of that property upon the market—lots 7 to 12, in block 5, of White's addition to the city of Plattsmouth—you may state what it was, then, during that period in 1885 and 1886.

Plaintiff objects for the reason the witness has not shown himself competent to testify as to the values of real estate, and as irrelevant and immaterial.

A. Well, I should judge that property there—there must have — a lot and a half on that property that was good property, and the other lots were down in a gulch or a drop *of* off that was there, and there was two houses on it at that time, but whether they were occupied I don't know, but I judge the property was worth 7 or 8 hundred dollars.

1865 Q. Did you know the property that is now called the surveyor general's property, consisting of lots 1 to 6, inclusive, in block 2, in Plattsmouth proper, during the years 1885 and 1886, from September to December, inclusive, in 1885, and from January to April, in 1886?

174 A. Yes, sir.

1866 Q. If you knew the value of that property upon the market at that time you may state what that was during that period.

Plaintiff objects for the reason the witness has not shown himself competent to testify as to the values of real estate, and as irrelevant and immaterial.

A. That property there was in pretty fair condition, and there was an old building there. The building would probably be worth what the old brick was worth that was in it.

1867 Q. Taking the building and the lots, what would be the fair value of that property at that time?

Plaintiff objects for the reason the witness has not shown himself competent to testify as to the values of real estate, and as irrelevant and immaterial.

A. About $1,000, I judge.

1868 Q. Did you know of the sale of that property that has been mentioned to you in the previous questions in December, 1885, which property was known as the property of the Ella V. Davis estate; and, if so, do you remember at what price it then sold?

A. I recorded the deed, but I don't remember exactly; but I think it was $4,000.00.

1869 Q. State whether or not, taking all this property together, the price at which that property was sold was a fair market value of it, taken in a body.

Plaintiff objects for the reason the witness has not shown himself

competent to testify as to values of real estate, and as irrelevant and immaterial.

A. Why, my answer would be, so far as I know—I have not figured up my answers, but I will state that I think $4,000 is a fair value. My estimate is made on what I thought was right.

1870 Q. I am putting it in this light. I am asking the question what all this property, all taken together in a body, would
175 have been worth upon the market, say, in December, 1885, and whether or not the price at which it was sold for then, which was $4,000, was the fair market value of that property at that time in its then condition.

Plaintiff objects for the reason the witness has not shown himself competent to testify as to the values of real estate, and as irrelevant and immaterial.

A. I should think it was from this fact, that when a piece of property is sold by itself it will bring more than where a number of lots are bunched together and sold. Where they are bunched together it would probably sell at a less price than when a single lot is sold.

Cross-examination.

By JOSEPH R. CLARKSON:

1871 Q. What was your business in 1884?

A. I was a travelling man and sold dry goods from St. Joseph.

1872 Q. What was your business in 1883?

A. The same.

1873 Q. When did you come to Plattsmouth?

A. In 1884, I think.

1874 Q. What part of the year?

A. In 1883 I came to Plattsmouth, I think.

1875 Q. And continued your St. Joseph business after you came to Plattsmouth, did you?

A. No, sir.

1876 Q. What business did you go into?

A. I went into the clerk's office in 1884.

1877 Q. What part of the year 1884 did you go into the clerk's office?

A. The latter part of 1884, I think.

1878 Q. When did you leave that office?

A. In January, 1886.

1879 Q. And during your stay in the county clerk's office
176 was it your duty to make copies of the instruments left there to be filed?

A. Yes, sir.

1880 Q. And you remember the fact that a deed from Robertson conveying this Davis estate was recorded by you?

A. I think I recorded that deed, but I am not sure.

1881 Q. What makes you think you recorded it?

A. It was quite a body of land.

1882 Q. And it was a large sale for those days?
A. I don't say positively I did record the deed, but I done most of the recording, and that is why I answer that question in that way.
1883 Q. While you were in that office did you deal in any real estate?
A. No, sir; except I bought a piece of property for myself.
1884 Q. When did you buy that?
A. Before I came into the office.
1885 Q. When did you buy that piece of property?
A. In 1883 or 1884.
1886 Q. Have you since sold it?
A. No, sir.
1887 Q. Is that the only piece of property you bought from 1883 up to 1885?
A. Yes, sir.
1888 Q. When did you go into the abstract and loan business?
A. January, 1886; but, of course, while I was in the office there I done abstracting.
1889 Q. But you went into business for yourself in 1886?
A. Yes, sir.
1890 Q. Who made the appraisement for this Leonard loan?
A. That I cannot tell you.
1891 Q. I understood you to say, "We appraised it at $1,500."
A. Yes, sir; but in the making of loans we get three appraisers always, but I cannot tell you who they were, but they were
177 three reputable citizens that appraised it.
1892 Q. And they appraised it at $1,500?
A. Yes, sir.
1893 Q. Were you in business at that time with W. L. Brown?
A. No, sir.
1894 Q. Were you ever in business with him?
A. No, sir.
1895 Q. Did you examine the title to that property?
A. Yes, sir; we made the abstract for them and the loan company examined the title.
1896 Q. You simply made the abstract?
A. They examined their own titles.
1897 Q. You were not in the loan company yourself?
A. No, sir.
1898 Q. And you simply made the abstract at that time?
A. Yes, sir, and we made that loan as the agents of the Omaha Loan and Trust Company, I think.
1899 Q. You made the loan?
A. Yes, sir.
1900 Q. Did you have a partner at that time?
A. Yes, sir.
1901 Q. Who was it?
A. It was J. W. Jennings & Co. at that time, I think.
1902 Q. And you were a member of the firm?
A. Yes, sir.
1903 Q. Do you remember the date of this loan to Leonard?

A. I would have to refresh my memory from the record.

1904 Q. Was it in July, 1886?

A. I could not say without refreshing my memory from the record. We made a good many loans.

1905 Q. Was there a separate appraisement for each separate advancement of funds?

A. On the bottom of the application it says so much for
178 the building and so much for the lot.

1906 Q. And on that application the lot stood in for $1,500, did it?

A. I think so.

1907 Q. Are you sure it was not $2,000.00?

A. I think not. I think it was $1,500; I think it was $4,500, all told—the lot and building.

1908 Q. Have you loaned money for other parties or have you simply sent in applications to loan companies?

A. We have loaned money for these different companies as their agents simply.

1909 Q. You have not had any money of your own to handle?

A. No, sir.

1910 Q. And you simply sent in the applications to the loan companies?

A. Yes, sir.

1911 Q. And they advanced the money if the applications were satisfactory?

A. That is right, sir.

1912 Q. Since January, 1886, have you bought or sold any property in Plattsmouth yourself?

A. No, sir.

1913 Q. Have you bought or sold any for others?

A. No, sir.

1914 Q. Do you know, Mr. Ritchie, whether Mr. Leonard has made more than one loan on that property of his?

A. He has not, to my knowledge.

1915 Q. You do not know of any other loan he has made on it?

A. I think there is another loan since that.

Redirect examination.

By Mr. COVELL:

1916 Q. During the years 1884 and 1885 was it your custom to make abstracts of title for parties that desired them while you were deputy in the county clerk's office?

179 A. Yes, sir.

1917 Q. State whether or not you then did much of that kind of business.

A. I cannot state the extent of it.

1918 Q. Did you do much of it?

A. Yes, sir; we done all the abstracting that came into the county clerk's office.

1919 Q. At that time was there any other person here that had an exclusive abstract office open and did an abstract business?

A. I don't know whether he was doing abstracting, but there was an abstractor, W. L. Brown.

1920 Q. What proportion of the abstract business that was done in Plattsmouth was done by you while you were deputy county clerk, if you know?

Plaintiff objects as irrelevant, incompetent, and immaterial.

A. In the county—we done about one-fourth that was done in the county at that time.

1921 Q. Did you, as deputy county clerk, record most of the conveyances that came into the office during the time you was deputy?

A. I done the most of the work in the office—that is, recording.

1922 Q. State whether or not, then, in that way you became familiar with the prices at which real estate was sold in the city of Plattsmouth and its several additions during that time.

A. Why, yes, sir; I could tell what amount land sold for. I could tell what a man sold his lot for and what his next-door neighbor sold his lot for, so that a man could tell exactly what the values of land were. That is one way of learning the values of land, by watching what amount they bring.

Recross-examination.

By JOSEPH R. CLARKSON:

1923 Q. You and —— —— and Mr. Jennings were in that office at the same time, were you?

A. Yes, sir.

180 1924 Q. And the abstract work was divided amongst you?

A. Between Mr. S., —— ——, and myself; yes, sir. It was divided between the three of us. It was very little that Mr. Jennings done.

1925 Q. In what way did you make an abstract; from the numerical index?

A. By making a copy of the whole record and not from the index.

1926 Q. Would you copy the instrument at length?

A. No; the consideration, the filings, the grantor and grantee, the date of the sale, the officer or notary or whatever it was, the description of the land.

1927 Q. Was it a matter of discussion among you as to the amount each separate piece of property sold for?

A. No, sir; not unless it was extraordinary.

1928 Q. And what you did was to copy what instruments came in?

A. Yes, sir; and when we make an abstract, *and* if the value comes to $4,000 and the man that sold it prior to that sells it for less than that, we think the value has rose on that piece of property, and we often noticed it that way.

1929 Q. Do you remember of this Davis transaction?
A. No, sir; I did not notice the values at all.
1930 Q. Who did you understand had bought the Davis property?
A. I don't remember who bought the property at that time.
(Excused.)

And hereupon the further taking of testimony in this cause is adjourned until 10 o'clock a. m. of Wednesday, October 16th, 1889, at the office of G. W. Covell, in Omaha, Nebraska.

OMAHA, NEB., *Oct. 16th*, 1889.

The taking of testimony was continued pursuant to adjournment, the same parties appearing on either side.

181 SAMUEL M. CHAPMAN, one of the defendants, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposes and says as follows:

1931 Q. You are one of the defendants in this case?
A. I believe I am.
1932 Q. State what connection, if any, you had with the estate of Ella V. Davis, either under the present trustee, Alexander H. Robertson, or under the former trustee of the estate, Mr. Stewart, who immediately preceded Alexander H. Robertson as trustee of that estate, if any.
A. Prior to the appointment of Mr. Robertson, perhaps a year or a year and a half—I cannot be certain without data—I was employed by the executor of the estate at that time, one Stewart, of Baltimore, to look after the interest of the estate so far as one Shryock had been agent for some years, looking after the local affairs of the Davis-Earley estate at Plattsmouth. He had collected considerable rents due the estate, and when they came to a settlement the executor claimed that he had a large amount of money in his hands that he refused to account for, and in fact the statement of Shryock showed that to be the fact. He refused to settle and turn over any of this money, claiming a large expense bill against the estate for services, which the executor claimed had been paid or that he was not entitled to. I examined the matter at considerable length and at first declined to have anything to do with the matter. It was then urged upon me, upon personal grounds, that I had formerly been an attorney for the estate in a considerable litigation, and after considerable hesitation I concluded to do what I could to aid Mr. Stewart in settling the matter with Mr. Shryock. The thing run along for, it must have been, a year. I had frequent interviews with
182 him, and finally, at the request of Mr. Stewart, I filed a bill of foreclosure of a mortgage that they held against a lot of Shryock's on Main street, which, I believe, is in this litigation. R. W. Windham was Shryock's attorney in that case and filed the counter-claim of defense, which practically offset the mortgage. I advised a settlement finally with Shryock, considering that being on the ground and being a man of good reputation that

he had the advantage of the estate or would have in a litigation, and the shortest and best way out was a settlement. It was during the pending negotiations for settlement that Mr. Stewart resigned his trust and Mr. Robertson was appointed at Baltimore.

1933 Q. What, if anything, did you have to do respecting the estate of Ella V. Davis after the appointment of Alexander H. Robertson as trustee of that estate?

A. To connect my testimony so that it will be plain I will just proceed with the statement that I have been making. I received a letter, my recollection now is, from Mr. Robertson, stating that he had been appointed as executor of the estate and would shortly be there in person to look after it—in Plattsmouth. Shortly after that he came to Plattsmouth, to my office, and looked the matter over personally himself. The matter of the settlement of this matter with Shryock was submitted to him. Mr. Windham, counsel for the other side, was sent for, and it was fully discussed in all its bearings and a settlement agreed upon there which, as I now recollect it, would be subject to approval upon his return. I do not think that he took the responsibility at that time to finally settle it until he would return home and consult the parties interested in the estate. That is my recollection, at least, now. The stipulation, however, was signed and a settlement practically made subject to their approval when he returned home. Prior to this time I had received letters from Mr. Stewart touching the property at Plattsmouth and its condition——

183 Objected to any letters received from Mr. Stewart prior to the time that Mr. Robertson was appointed.

WITNESS: I advised a sale of that estate. The property was in such a condition in Plattsmouth that I advised the sale of everything. Mr. Robertson came there and I advised him to dispose of the property. It was in such a condition that it was in an absolute state of waste, and for the interest of the estate I advised him to dispose of it. He stated that that was one thing that he had under consideration in this visit—a disposition of this estate and the sale of it. He wanted to know what the property was worth on the market. I told him that I would not be a good judge of it. I could not tell what it was worth, and my buggy was there at the time and my horse, and I said, "Jump into my buggy and we will go and look at the property, and you can make up your mind what it is worth." I took him to look at the property, and he looked at it and examined it, and was very anxious after he looked at it to sell it. He was very emphatic in his opinion that it was for the best interest of the estate to sell the property. He wanted to know what it was worth, and I told him I had never dealt in real estate in my life, and I was not good authority, but would advise him to see the real-estate agents in Plattsmouth, the men dealing in property and handling it, and he could make up his mind. I took him to see every real-estate man, I think, in the city that day.

1934 Q. To whom did you take him and give the names of the different parties, according to the best of your recollection? And

state what occurred at the time when you met such parties, if you met any such parties.

A. I went with Mr. Robertson and introduced him to John W. Barnes, who was then one of our real-estate men. I introduced him to A. W. McLoughlin, of the First National bank, who was engaged in real-estate business, but who was interes-ed to
184 some extent in the estate, receiving the rents that were paid in there, and knew something about it.

I took him to Windham & Co., real-estate men, and introduced him to them. I took him to L. E. Bennett, another real-estate man, and introduced him to him, and we discussed the question of value with him, and I am very confident I took him to William L. Brown, who has been a witness in this cause, and to Dr. John Black, who lived on the adjoining property, and I took him to Calvin H. Parmalee, who has been in this case, and I introduced him to all these gentlemen, stating his object and inquiring as to the value of this property and the desire of the estate to dispose of it, and I believe I introduced him to Frank Carruth, who has been a witness in this case. I am very confident of this: that I called *on* him in a short time—in the course of an hour or so—on every man that would be considered a judge of that property or would be apt to want to invest in that kind of property, and he inquired the value of this property from these parties, and my recollection now is that four thousand dollars was the highest value that he could get any man to say that that property could be sold for—that is, a cash sale. His idea was to sell the property for cash if it could be done, and my recollection now is that he did not find any one that put a value on that property of over four thousand dollars. I recollect very distinctly his conversation with Mr. Parmalee for the reason that I told him Mr. Parmalee was a man that always had money. If there was anything in the bargain he would see it as quick as any one, and he might sell to him if Mr. Parmalee could see where he could make anything. I recollect Mr. Parmalee's conversation with him in a manner that is peculiar to Parmalee and his saying that he would not give over $3,500.00 for the property, and also saying to him, as I had said to him and every one that knew anything about the property in Plattsmouth would say to him, that if he sold the outside property he would have to make the business property sell the other. At that time there was no sale of outside property
185 in Plattsmouth. There were lots sometimes changing hands, but there was practically no sale for them.

1935 Q. Is there any other person whose name you have not mentioned to whom you introduced him at that time?

A. There was one party I introduced him to, the firm of Wise & Son, William S. Wise and his father. I recollect of Parker Wise taking him to the property, and I am satisfied that William S. also was in the office and gave us his figures. It is a good while ago, and Mr. Wise says that he has no recollection of it, at which I would not wonder at all.

1936 Q. State whether or not the Black to which you introduced him was Dr. John Black or George H. Black.

A. That was Dr. John Black, the man who has been sick for the last two years, and owns property in the same block with what was known as the surveyor general's property, the six lots where Mr. and Mrs. Early used to live in Plattsmouth. I see it is mentioned, in looking over your testimony, as the Cunningham property. That — was known as the surveyor general's property was located near the Cunningham.

1937 Q. State what occurred between Mr. Robertson, you, and Dr. Black, if anything, at the time when you introduced him to him.

A. I would not undertake to give the conversation with any one, but I know this, that Dr. Black told him and me that he would give as much or more for that property without the surveyor general's building than with it.

1938 Q. What value, if any, did Dr. Black at that time place upon the whole property taken together, that upon Main street and the outside?

A. I do not recollect that Dr. John Black put a value upon it. I introduced him to Dr. John Black with a view to selling the particular property in the block that Dr. John Black owns the south half of except one lot.

1939 Q. What value, if any, did Dr. John Black place
186 upon that property which adjoined his property, which you have heretofore described as the surveyor general's property?

A. I cannot recollect; he is a man like Parmalee. He would not tell a man that the property was worth any more than it was. I knew that the values that were placed upon it by him were ridiculously low. I do not recollect what value he put on these lots. I would not say. I was talking to him the other day, and he says that he has no recollection of seeing this man at all.

1940 Q. State within your personal and professional knowledge in what state of health Dr. Black has been for the last two years.

A. In the last two years he has been a great portion of the time an invalid and confined to his bed. He has been affected with some brain trouble that has rendered him unfit for business of any kind. He has almost recovered now; at least I would judge so from his appearance.

1941 Q. If you recollect what value Mr. Windham placed upon the whole property taken together at the time Mr. Robertson and you met and consulted him as to values, state what that was.

A. Mr. Windham's value that he placed upon the property was about $4,000.00; Mr. Parmalee put it at $3,500.00. He said he would not give more than that, and he would not give more than that, but he would not say that he would buy it at that.

1942 Q. What price, if any, did L. P. Bennett put upon the property at that time?

A. Between three and four thousand dollars. I am not sure but Major Wheeler was consulted about that property.

1943 Q. Maj. D. H. Wheeler?

A. Yes, sir.

1944 Q. Who is now a resident of this city?

A. Yes, sir; I know this: that I took this man Robertson to

every man in Plattsmouth that was at home that day. I wanted to be able to give him an intelligent idea of the value of that
187 property; Bennett and Wheeler were in partnership prior to that time, but Dan. was in the city that day and was consulted.

1945 Q. What price, if you remember, was put upon the property by Frank Curroth?

A. I do not recollect. I know that none of them put it at over four thousand dollars. I would not undertake to say. I won't be positive that I introduced him to Mr. Curroth, but that is my recollection at the present time. I know that he was a shrewd dealer.

1946 Q What price, if any, was put upon the property, all taken together, by W. L. Brown?

A. I cannot recollect. I know that none of them priced it at over four thousand dollars. I will say this, further: Mr. Robertson—when Mr. Parmalee was asked if he would give $3,500.00 Mr. Robertson asked me if I would advise a sale at $3,500.00, and I told him emphatically no; I would not advise him to sell for less than four thousand dollars.

1947 Q. You may state where the conversation occurred—that is, at what particular place in the city of Plattsmouth—between Mr. Robertson and Mr. Parmalee in your presence respecting this property—C. H. Parmalee.

A. The conversation with Mr. Parmalee occurred on the street; we met on the street and talked with him, and my recollection is that he stepped into what was known as Mergisses' shoe store.

1948 Q. Peter Mergises?

A. Yes; where they sat down and had a talk in regard to that.

1949 Q. State whether or not on the day that Robertson was in Plattsmouth, on the day on which you took him to examine the property belonging to the estate which he was then trustee of, any conversation whatever took place in your presence in the office between Mr. Parmalee and Mr. Milton D. Polk with reference to the Ella V. Davis estate or with Mr. Robertson in your presence
188 in your office, in the city of Plattsmouth, Cass county, Nebraska, on that day.

A. Mr. Parmalee was not in my office on that day when Mr. Robertson was there; neither do I think Mr. Polk was present more than to come in and out of the office. I have read Mr. Robertson's testimony, and, with one or two exceptions, in the main it seems to be about correct. He states that I met him at the hotel. That is a mistake. He came into the office in the morning and introduced himself, stating that he had come in town that morning. I recollect very distinctly of this being the fact, because when he came in he had to wait a few moments after handing his card before he could introduce himself to me. I was talking with a client. I was transacting some business or some consultation, and I asked him to waite a moment until I got through with the party, and in a few moments I met him and had my first conversation with him. My recollection is that this was about nine o'clock in the morning, between eight and nine o'clock. I was with Mr. Robertson from that

and would not undertake at this late day to say. I know that I wrote him a letter, saying to him whether it was, in my opinion, or was not necessary to put the proceedings through court to sell the property. I recollect at this time that he was there or immediately following it that I dictated a petition or drew a petition in the district court making application for authority to sell as trustee or executor of the estate. My opinion now is that after examining the sale I came to the conclusion that it was not necessary, but what opinion I did come to at the time in looking at it I would not say, because I am satisfied that I am in writing on that question, and if he has not lost it he has my
192 opinion as to whether it was necessary or not. Mr. Robertson was impressed with this just as Mr. Stewart had been before with the fact that there was or probably would be difficulty in selling or getting the parties interested in the estate to consent to the sale, and for that reason asked that an intelligent value be placed upon it, and I wrote him the letter which I did. I wrote him a letter, and I believe you have it in this record, that $4,000.00 was the best price that could then be got upon this property, and I believe that it is the only letter that I ever wrote to him in regard to the property. I want to say further that I never undertook nor agreed to sell that property for Mr. Robertson in the world. I told him I would do what I could to aid him in selling it. I never saw any of the correspondence between Mr. Polk and Mr. Robertson until this suit was commenced. I want to state further in regard to the sale of this property. It was before Mr. Robertson came here as trustee. Parties in Plattsmouth attempted to buy the property through Mr. Stewart. One of the parties was Byron Clark, an attorney in this case, and his father, and it was not sold at that time for the simple reason that the parties interested in the estate refused to allow Mr. Stewart to complete the sale, but at that time I was the go-between. Stewart and those parties—I gave them the address, and I think they done the correspondence themselves. I practiced law in Plattsmouth from 1867 until I went onto the bench. I never bought or sold a piece of property during that time for the purpose of speculation except the little property that I own, and I presume I was as incompetent a judge of real estate as almost any man that could be picked up.

1959 Q. You may state, if you know, what was the offer made by Byron Clark and his father or either of them for the property belonging to Ella V. Davis estate at the time such offer was made.

193 A. They offered $2,700.00 for the property, but that did not include the lot that Leonard got, and that was some two years before that, and that property was in good repair.

1960 Q. Did or did not the offer made by either of them for the property involved in this controversy include all of what was then known as the Early estate and is now known as the Ella V. Davis estate, except the piece of property on Main street which was afterwards purchased by V. V. Leonard.

A. It included, as I recollect, the property except the Leonard

property, which did not belong to the estate. They had a mortgage on it and it was owned by George W. Shryock.

1961 Q. At the time that Mr. Robertson visited Plattsmouth state wheth-r or not the estate known prior to that time as the Early estate and known now as the Ella V. Davis estate had any interest whatever in the V. V. Leonard property on Main street than a mortgage interest.

A. That was all.

1962 Q. Was or was not that mortgage interest then in process of foreclosure?

A. Yes; it was. I had instructed James S. Mathews, my old clerk, to prepare a bill of foreclosure and file it, which he had done, and the suit was then pending.

1963 Q. You may state whether or not Mr. Robertson, as trustee of that estate, or his predecessor has ever paid any fees to you for your services in respect to that matter.

A. No, sir; I never got a cent of fees and know nothing about the fees that were charged in the case. It was a matter between Mr. Polk and Mr. Robertson I find out since and know nothing about it.

1964 Q. Mr. Robertson in his testimony, in answering
194 question 328, in his direct examination, which question reads as follows:

"Q. What, if any, arrangement did you make with them as to their applying for legal proceedings and sale of the property?"

"A. The proceedings were without any doubt that the attorneys were to take the proper proceedings and a decree under which the sale was to be made; that the attorneys were to *take the proper proceedings and decree under which the sale was to be made; that the attorneys were to* charge the commission of ten per cent. on the amount of the sale, and, inasmuch as I had visited the West in connection with this matter, after a full discussion it was agreed between Mr. Chapman and Polk and myself that the fees should be divided between myself and Chapman & Polk; in other words, that they were to have one-half of the fee and I one-half of the fee for the trouble and expense I was to in coming to the West."

You may state whether or not any such agreement or arrangement was made between you and Mr. Polk with Mr. Robertson at that time. State the facts in that regard, if any.

A. I know nothing about any such arrangement. I never had a conversation about fees in that matter with Mr. Robertson in my life and know nothing except what he and Mr. Polk have testified to; outside of that I have no personal knowledge. I have rendered a considerable service for this estate in times past without any contract as to compensation. I had always made a reasonable charge and they had paid it; that was all.

1965 Q. State whether or not you wrote Mr. Robertson any letter advising him to sell the property involved in this controversy, known as the Ella V. Davis estate, either before or after he was at Plattsmouth, other than the one that has been introduced in evidence by Mr. Robertson in this cause advising him to sell the property at four thousand dollars.

A. I wrote Mr. Robertson once, after he left, a letter, in which I gave him an opinion in regard to the whole and his power
195 to make a deed without court proceedings. I presume in that letter I urged the sale of that property or advised it. I wrote the letter in the record.

1966 Q. You have seen a copy of the letter?

A. My recollection is that I did not write any other except that one. I may have and may not.

1967 Q. By that one you mean the letter introduced in the record which you have read as being a part of the record?

A. Yes, sir.

1968 Q. You may state whether or not you wrote or had any knowledge of any being written—any letters being written after that time in the name of the firm of Chapman & Polk to Mr. Robertson by any person.

A. I never did. I may say that I am surprised at some things in Mr. Robertson's testimony. Perhaps it arises from conversations he has had with other parties, being a good while ago, but the idea that I would have stated to that man that I was a relative of Robert E. Lee or a Col. of a Pennsylvania regiment is supremely ridiculous. I never had such a conversation with him. I never was a colonel of a Pennsylvania or any other regiment or a relative of Lee's. I would not like to go on record as saying that I was. I do not think we were together long enough to discuss social questions to any great extent. I was a high private in a Western regiment from the State of Iowa. How he could have made a statement of that kind is beyond my comprehension, if it was honestly made.

1969 Q. In your testimony heretofore you referred to a conversation between Mr. Parmalee and yourself on the morning in which he came to give his testimony in this case. State whether or not you called his attention to the fact that morning of having introduced him to Mr. Robertson while he was in Plattsmouth, and whether or not you called his attention to the fact that he had priced the property at the time of the introduction by you
196 to him and what he said in that regard.

A. I saw Mr. Parmalee that morning and he told me himself that he was a witness in this case, stating that he did not know what they wanted him for and asking me what interest I had in it. I stated to him that the only interest I had in it I was an unwilling defendant, and then called his attention to the fact that he had been consulted by Mr. Robertson as to the price of the property, which he recollected, and also that he recollected what he offered him, and that was $3,500.00. He stated that himself voluntarily, but it was only a few moments' conversation. At the time Mr. Robertson was at Plattsmouth and looked over this property it was in a serious condition of waste, tenantless, and I had, at Mr. Stewart's request, admitted two tenants in the property that were taking care of it and keeping it from being destroyed. I had a tenant or a party that I had let go into the brick house, the one known as the surveyor general's property, to care for and look after it, and the other property, my recollection is, was vacant.

1970 Q. State what connection, if any, A. W. McLoughlin, who was cashier of the First National Bank of Plattsmouth, had with this estate from the that Mr. Robertson came to Plattsmouth to examine it.

A. He received the rents of the estate and kept an account of it and accounted for and received the rents.

1971 Q. For what length of time had he had charge of the property and received the rents, do you know?

A. I do not know anything about it. I know that he received the rents and he and Mr. Robertson had some sort of a statement when he was there that he had. I know that he took me to the bank and I introduced him to Mr. McLoughlin and he showed him the account and the amount he had on hand, the amount of the rents exactly.

1972 Q. What, if anything, did you know about the sale of the property belonging to Ella V. Davis estate to Michael O'Donahoe? State the facts in that regard within your knowledge.

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A. I know nothing about it further than some considerable time after the sale was made I was informed, and I think by O'Donahoe, that a purchase had been made of the property. I know I was surprised that I did not know anything about it, and I would not undertake to state how long, but it was some weeks after the transaction that I first learned of the conveyance. I am not certain, then, but I learned it from a party outside. I would not be sure, but my recollection is that I had first heard of it and then made inquiry. I think I heard it first from outside parties.

1973 Q. If there is any other matter to which your attention has not been directed by questions in this examination which you desire to state with reference to the conversations between you and your firm and Mr. Robertson at the time when he was in Plattsmouth which you have not stated, state it now.

A. I do not recollect of anything now.

1974 Q. At the time when Mr. Robertson was at Plattsmouth and at the time when you wrote him the letter which he introduced here in the record, advising that he sell the property at $4,000.00, what was its condition and what was the reason why you advised him to sell it at that price, if you did so advise him?

A. The reason that I advised him to sell it at that time at that price was because I believed it was all that it was worth.

1975 Q. Give the condition.

A. The condition was as I stated before; it was in a state of waste. He had looked at it himself, and knew the condition precisely and what it was. He testifies very intelligently, I think, as to the condition of the property himself. My opinion of values was framed simply and solely from the inquiries that were made as to its value by those that were supposed to know.

1976 Q. You may state whether or not there was any agreement or arrangement between your firm and Mr. Robertson with the firm of Chapman & Polk *was* to sell the property

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belonging to the Ella V. Davis estate for Mr. Robertson as Mr. Robertson's agents in that regard.

A. I stated that I never undertook to sell it; that I advised him to sell it; that he looked up the matter himself when he was on the ground personally, and that four thousand dollars was considered to be its value. I advised him not to sell for less than that and advised him to sell it for that. I advised him not to sell it for $3,500.00, the offer or suggestion that Mr. Parmalee made—that he would not give more. I never had a contract or agreement with him to sell his property, and never considered that I was his agent to sell it.

1977 Q. You may state whether or not he ever employed the firm of Chapman & Polk at any time to sell that property for him as trustee of the estate at any price.

A. He never did. He said just this when he left: that he was going to sell that property right away if he could get the consent of those interested, and the understanding was that it was not worth over $4,000.00. That was the understanding, and he looked it up himself.

1978 Q. You may state whether or not, after noon on the day on which Mr. Robertson was at Plattsmouth, he had any conversation with you and Mr. Polk together in your office, in the city of Plattsmouth, in which any agreement or arrangement was made by which the firm of Chapman & Polk was to sell this property for him as his agents to any person or persons at any price.

A. He did not. After the noon hour I did not see him.

1979 Q. He was in the city?

A. I understood afterwards—of course, it was heresay—that he was in the city and at his hotel a part of the time with Mr.
199 Polk. I was not there, and know nothing about it.

1980 Q. State whether or not prior to noon of that day and at any time during the day the firm of Chapman & Polk were employed by him in any way to act as his agents and sell that property.

A. I have stated that there was no agreement to sell the property. I never made an agreement to sell it further than if I could further his interest in finding a purchaser or advising a sale I would do so, and I told him I would write my opinion to him when he got home to assist him in making the sale, which I did. He stated there in the office that he was a practicing attorney and wanted in these matters of litigation to look after the matter personally himself—that is, he wanted to be on record as of counsel, and he considered himself an attorney for the estate—and Mr. Polk stated afterwards—of course that is heresay—that he requested that a charge be made to cover his fees; in other words, that we enable him to get a fee out of the matter. That is something I know nothing about. I never made a charge of that kind and never authorized one to be made, and know nothing about it.

1981 Q. State whether or not you have any letters that were written by Mr. Robertson to you in respect to this estate.

A. I had one letter written by Mr. Robertson after he returned

from Baltimore. I have been out of the office for a number of years, and the letter files and everything appertaining to the office were left there, and, in fact, are in the office yet. I did not take much of any — the correspondence that was there as office correspondence or private correspondence The old letter files are all there yet. I went in one day and looked those files over and could not find any other letter, but I know I received one letter from Mr. Robertson after he went to Baltimore about the sale of the property. I know that I wrote him the letter that was in the record, advising him to sell.

200 1982 Q. Was that all the correspondence that passed between you?

A. That is all the correspondence I recollect of having with this gentleman, excepting I wrote him an opinion in writing as to whether it was advisable to take a decree of the court authorizing him as trustee to make this sale.

1983 Q. What, if anything, was done by you, after preparing the petition for license to sell the real estate under order of court for that purpose, looking towards obtaining a decree for the sale of the property? State the facts in that regard.

A. While that matter was pending the property passed to O'Donahoe and Polk and I gave it no further attention so far as I was concerned.

1984 Q. After you had prepared the petition for the license?

A. Yes, sir; the property having passed, I gave the matter no further attention.

1985 Q. What, if anything, do you know respecting the filing of that petition in the office of the clerk of the district court and the withdrawal of it from the records of dismissal of the proceedings, if such was done?

A. I know nothing but what the records show. I recollect nothing but what the records show, and in fact had forgotten all about it until my attention was called to it by these papers. It had passed out of my mind when these people took the property. I asked if they had purchased it and they said they had, and my attention was not called to it any further, and it absolutely passed out of my mind and I know nothing about it any further.

1986 Q. What search have you made for the letter or letters written to you by Mr. Robertson since the taking of the testimony of Mr. Robertson in this case?

A. I went to the office personally and looked the files through, and got Jesse Root, the young man that has charge of the office, to go through all the letter files to look them through, and he

201 did so, stating that he could not find anything there.

1987 Q. In the search that you made were you able to find any letter or letters from Mr. Robertson?

A. No; I might have carried the letter that I received home and left it among my papers at home or else lost it. I know nothing about it, as I find all the Stewart correspondence at my house.

1988 Q. Have you searched everywhere for such letter or letters

where you usually keep such correspondence; and, if so, what was the result?

A. Yes; I looked among my papers at home and in the office and cannot find any traces of the letter.

1989 Q. State what, according to the best of your recollection, were contained in such letter or letters, if you can.

A. I could not state any further than the mere fact that it was asking me for the letter which he had suggested, and I wrote him one. He was there as to the value of the property, and wanted to know of me what the value was. I cannot pretend to recollect anything that was in it, because it was a matter that I dismissed from my mind at the time and have not thought of it since.

Cross-examination by Mr. CLARKSON:

1990 Q. Have you a general remembrance of the terms of the will?

A. No; I have not.

1991 Q. Do you remember the codicils of the will, which limited the power of the trustee to sell such property only when it did not bring rent?

A. I think there was such a codicil, since you mention it.

1992 Q. This conversation that you had with Mr. Parmalee after Mr. Robertson left was before the time of the sale to O'Donahoe, as you remember?

A. My recollection is that that was the day after he left. It was just about this: Mr. Parmalee came along on the street and said, "Well, did that feller sell his property?" That is my recollection
202 of what he said. Then he went on to say that there might be some money in buying it, but he doubted very much whether a man would make anything out of it; that he did not care to have anything to do with it.

1993 Q. You do not know when the petition asking from the court a license to sell was filed in court?

A. I do not know when that petition was filed; I do not know anything about it.

1994 Q. Was not the offer that Byron Clark and his father made for the property simply for the outside property and not for either one of the Main-street pieces?

A. There was only one piece of the Main-street property, and that was the 20 feet of ground occupied by Slater, the jeweler.

1995 Q. The west 20 feet of lot 12, block 29?

A. Yes, sir.

1996 Q. Was that included?

A. My recollection is that it was all included in it. Mr. Clark says that it was not, but my recollection is that it was. Another thing that rendered the property not as saleable as it would be, this man Slater had a lease on this lot for a term of years, and it did not expire for several years afterwards. It prevented any one getting possession of the buildings until his term was out. I think his lease only expired this last year.

1997 Q. Do you know of Mr. Robertson passing through Plattsmouth the next day?

A. I think I recollect being told that he had passed through, and that he met Mr. Polk at the depot. I think I recollect of that, that he returned that way.

1998 Q. What passed between him and Mr. Polk in the afternoon of his visit you know nothing of?

A. No, sir; I do not recollect. I recollect I was very busy
203 in a matter that afternoon that prevented me seeing him.

1990 Q. What, if anything, do you know about the arrangement between Mr. Polk and Mr. O'Donahoe about buying this property?

A. I know of none.

2000 Q. Mr. Polk did not tell you of the sale before it was completed?

A. No, sir; I did not know anything about it until after it was made. My recollection is that it was made when I was away from home.

2001 Q. This letter of October 22nd in evidence is the only letter that you remember of writing to Mr. Robertson, excepting the possible letter in which you wrote him advising him first to get the order of court?

A. Yes, sir.

2002 Q. The letter that you say you received from him and have not been able to find, did that come to you personally or directed to the firm?

A. My recollection is that it came to me personally. That fact is, so far as my having anything to do with this property was the firm never had anything to do with it, as I understood it. It was a matter I had in my own hands when Mr. Polk came into my office, and it never was considered by myself as a firm transaction in any way, shape, or form, and in fact all there was to it was simply to get the settlement from Shryock. It was a small matter.

2003 Q. You did not know that after this stipulation was signed the court proceedings were taken in the Shryock foreclosure, which ended in a decree?

A. I knew a decree was taken.

2004 Q. You knew that these proceedings did go on?

A. Yes, sir.

2005 Q. Do you know who carried them on?

A. I do not. I do not know whether I took that decree in
204 court, or James S. Mathews. Prior to that Mr. Stewart wrote me a personal request that I look after the matter for him. At that time I had made a change in my business, trying to close up my old business, and had temporarily retired from the practice of the law, selling my office to some parties. I recollect that was one reason I gave him, that I did not want to burden myself with anything that belonged to the estate, and when the foreclosure suit was commenced my recollection is that I authorized James S. Mathews to file it, and I did not want to appear in court at all—that is, I was endeavoring to close up my business and did not want to go into

court. My old clients were running the life out of me with everything they had, and my recollection is that I had Mr. Mathews file the foreclosure matter and look after it. I might have taken that decree in court or he might.

2006 Q. If you took it what was the object in taking it?

A. I do not know; I could not say at this date.

2007 Q. You understood by this stipulation that these proceedings were at an end?

A. That he would settle with Shyrock.

2008 Q. And that a quitclaim deed was to be given to Robertson?

A. Yes, sir; my recollection was that it was settled; my recollection now of that decree is that it was considered that a decree ought to be taken in order to wipe out the old foreclosure business; that was the understanding, that a decree should be taken or sale of the property made.

2009 Q. You had nothing to do with that?

A. I do not recollect now of having anything to do with it.

2010 Q. Do you know that Mr. Polk had gotten a sheriff's deed to that Shryock property?

A. I know nothing but what the records show.

2011 Q. Do you know that he got a quitclaim deed from Shryock?

A. I did not know it until my attention was called to it. I do not think I ever heard of that.

The signing of these depositions *are* waived.

205 ANDREW W. MCLOUGHLIN, of lawful age, being by me first duly sworn, as hereinafter certified, examined in chief by Mr. COVELL, testified as follows:

My name is Andrew W. McLoughlin; for about 14 years I lived in Plattsmouth; until about three years ago in Cass county, Nebraska.

2012 Q. In what business were you engaged in Plattsmouth, Cass county, Nebraska?

A. From the 22nd of April, 1874, until the 12th day of June, 1886, I was cashier of the First National bank.

2013 Q. Where is the First National bank; in what city, county, and State?

A. In Plattsmouth, Cass county, Nebraska.

2014 Q. Did you while cashier of that institution deal in any real estate in the city of Plattsmouth?

A. Yess; I did.

2015 Q. You may state whether or not during the time that you were there you had anything to do with the collection of rents belonging to the estate of Parmalee known as the Early estate, but later known as the Ella V. Davis estate.

A. Yes, sir.

2016 Q. You may state whether or not you were familier with the condition and situation of the several pieces of property belong-

ing to the estate just named to you during the time that you were in Plattsmouth, Nebraska.

A. Yes; I was familiar. I spoke about four pieces of property belonging to the estate.

2017 Q. State if you remember the piece of property that was known and called the surveyor general's property, in the city of Plattsmouth, and if you know its condition and value during the time that you were in Plattsmouth, and particularly during
206 the year 1885 and early part of 1886, say up to the first of May, 1886.

A. I knew the property, of course. There was a building on there. There was a brick building on it that had been formerly occupied by the surveyor general, and for several years before that it had not been occupied at all.

2018 Q. You knew the value of this piece of property, did you, on the market?

A. Yes, sir; about what it was worth.

2019 Q. You may state whether or not you knew the piece of property mentioned, on Main street, in the city of Plattsmouth, that is known as the property occupied by Slater as a jewelry store.

A. Yes, sir.

2020 Q. Being the west 20 feet of lot 12, block 29, in the city of Plattsmouth?

A. Yes, sir.

2021 Q. You knew its condition and value also?

A. Yes, sir.

— Q. State whether or not you knew during the year 1885 and a part of 1886, by the first of May and prior thereto, the condition and value of the property on which Mr. Polk now resides.

A. Yes, sir.

2022 Q. State also whether or not you knew the value and condition of the property that is now occupied by Drummond.

A. Yes; I do.

2023 Q. What was the condition of the property at the time mentioned now occupied by Mr. Polk as a residence?

A. My recollection is that it was very much delayed and run down. There were two small houses on it, and they were very much out of repair and almost worthless.

2024 Q. You may state whether or not there were any buildings on the property that is now called the Drummons property.
207 A. No; there was none.

2025 Q. You may state whether or not you knew the property that was formerly known by Shryocks and on which the Davis estate or the Early estate had a mortgage and which is now known as the V. V. Leonard property.

A. Yes, I do.

2026 Q. You may state whether or not in the year 1885 *that* had been upon it any buildings—that last piece of property.

A. I would not be positive what time it had any buildings on it

prior to the time that Leonard built, but what year he built I do not know; it is not very long ago.

2027 Q. Prior to that time had there been a building upon it; and, if so, had it been burned off?

A. Yes, sir; a building occupied by Shryock as a furniture store and afterwards occupied by Westcott as a tailor shop, and he set it on fire and burned out the whole block; that is my recollection.

2028 Q. State *of* you knew the value of all of these several pieces of property on the market during the year 1885, say from September to December, inclusive, and the early part of the year 1886, say from the first of January to April, inclusive.

A. Yes, sir.

2029 Q. In what way or manner did you become acquainted with the valu-s of property upon the market in Plattsmouth?

A. From buying and selling and being acquainted with men and associated with men who were in the business.

2030 Q. You may state generally the values of the several pieces of property belonging to the Ella V. Davis estate on the market from September, 1885, to and including April, 1886, that property being the west 20 feet of lot 12, block 29, in the city of Plattsmouth, and the east half of lot ten, in block 28, in the city of Plattsmouth, on which the Shryock mortgage was, owned by the
208 estate of Ella V. Davis, and the surveyor general's property, on which Mr. Polk lives and the property which is now called the Drummond property—all taken together, what, if you know, was the fair market value of that property, for cash, upon the market or for part cash and part time upon the market altogether? State it.

A. It hardly had any commercial value at that time. There was no sale for the property at all.

2031 Q. Give the whole value taken together of the several pieces.

A. I would estimate it at about six thousand dollars; all of it taken together.

2032 Q. You may state whether or not there could have been at that time, from your recollection of the way real estate was being sold and of the condition of the market at that time—whether or not any purchaser could have been found in the city of Plattsmouth for all of that property at the price of six thousand dollars.

Objected to as incompetent, immaterial, and irrelevant and calling for a conclusion of the witness.

A. No; I do not think that you could have found anybody that would have bought it at that price.

2033 Q. You may state whether or not, from your knowledge of the condition of the real-estate market in Plattsmouth, there was any demand for that property from which you collected the rents, such as were collected for the estate of Ella V. Davis, deceased, or for the Early estate, in the way of purchasers thereof.

Objected to as incompetent, immaterial, irrelevant, and calling for the opinion of the witness.

A. No; there was not any sale for the property at all. I am estimating this property at what I think it was actually worth if a man wanted to buy it, but the fact was that nobody wanted to buy it.

The plaintiff moves to strike out the answer as not responsive.

209 2034 Q. Why was it worth that much if within your knowledge there were no purchasers to be had and no persons desired to purchase the property I have been questioning you about?

A. I do not know hardly whether I can answer that question intelligently. There was very little property changing hands at all in the city at that time at any price. The surveyor general's place being located pretty close to Bell Emery's (which was a whore-house) did not make it very valuable; in fact, the Drummond property is pretty close there, too, which did not make it very desirable. There was another whore-house a little closer than Bell Emery's, right across the street; her name was Engle, I believe.

2035 Q. Do you recollect the circumstances of hearing of the sale of this property belonging to the Ella V. Davis estate some time in December, 1885, to Michael O'Donohoe; and, if so, did you or did you not hear of the price paid for it? And, if so, you may state whether or not the price at which it was sold was a fair price upon the market at that time, taking into consideration the condition and situation of the property and the surroundings of the two pieces of property known as the Drummond property and the surveyor-general property.

Objected to for the reason that it is incompetent, irrelevant, and immaterial, and includes several questions in one.

A. Yes; I remember the circumstances. I could not state that price that was paid for it.

2036 Q. If the price at which it was sold to Michael O'Donohoe was the sum of four thousand dollars, you may state whether or not that was a fair price for the property upon the market at that time, considering the condition of the property and surroundings as they have been heretofore related by you, or a portion thereof.

Objected to as incompetent, immaterial, and irrelevant, and calling for the conclusion of the witness; that the witness has
210 not shown himself an expert in real-estate values.

A. Four thousand dollars was more than I would give for it; I know that.

2037 Q. In your judgment, from the knowledge which you had of that property, having had it in charge for a number of years, state whether or not $4,000.00 in December, 1885, or January, 1886, was all the property was worth upon the market in Plattsmouth, all taken together and sold to one purchaser.

Objected to as incompetent, immaterial, and irrelevant, calling for the conclusion of the witness; that the witness has not shown himself an expert in real-estate values.

A. Yes; I think that was all that it could have been sold for to any one in that market.

The cross-examination of this witness is waived.

The signature of this witness to this deposition is waived by all parties.

The further taking of testimony is adjourned to the 24th, at 10 o'clock a. m., October 24th, 1889.

OMAHA, NEB., *Oct. 24th*, 1889.

The taking of testimony was resumed pursuant to adjournment, the same parties appearing on either side.

WILLIAM H. PICKENS, of lawful age, being by me first duly sworn, on his oath deposes and says as follows, examined in chief by Mr. COVELL:

My name is William H. Pickens; my residence is Plattsmouth, Cass county, Nebraska; my occupation is that of carpenter and builder; have lived in Cass county 11 years.

2038 Q. You may state if you know the property that was formerly called or which belonged to the Early estate and latterly has been known as that which belonged to the Ella V. Davis
211 estate; and, if so, how long have you known that property.

A. I have known of the property, more or less, ever since I have lived there. I have done work on the property from time to time, repairing and so on.

2039 Q. You may state if you knew the values of property generally upon the market in Plattsmouth during the time that you have lived there; and, if so, how you acquired your knowledge of the market values of property—real estate—in the city of Plattsmouth.

A. I have been dealing in real estate back and forth—trading and buying and selling—since I lived there.

2040 Q. Then you are acquainted with the values of property upon the market during the time that you have lived there?

A. Yes; somewhat.

2041 Q. Do you know the property on Main street which has been called and known now as the Slater property, which the Slater jewelry store is situated on, and being the west 20 feet of lot 12, in block 29, in the city of Plattsmouth?

A. Yes, sir; I have done a great deal of work on the same building.

2042 Q. You may state, if you know, the value of that property on the market in the year 1885, say from September 1st, 1885, to December, inclusive, 1885, and from January 1st, 1886, to say May 1st, 1886.

A. I could come pretty close to it.

2043 Q. You may state, if you know, the value of the property now known as the Leonard property, where Leonard's photograph studio is situated, during the same time on the market.

A. Yes, sir.

2044 Q. You may state if you knew the value of the property that has generally been called the surveyor general's property during the same time upon the market in Plattsmouth.

A. Yes, sir.

2045 Q. You may state if you knew the value of the property upon the market in Plattsmouth during the same time known as the Drummond property, where Drummond now lives, during the same time.

212

A. Yes, sir.

2046 Q. You may state, if you know, the values of the property on the market in Plattsmouth upon which M. D. Polk now resides or did reside during the same time.

A. Yes, sir.

2047 Q. Take all that property together and state what the value of that property sold in a body upon the market in Plattsmouth *was* in December, 1885, would have been.

Objected to for the reason that the witness *is* not shown himself to be competent judge of real-estate values in Plattsmouth.

A. I would think where Slater's lot was—that is, the west 20 feet—I think that is where that lot is—I would judge about $900.00 would be its value at that time. Leonard lot—that is a larger lot and better location—that, I would judge, would be about $1,200.00. Surveyor general's office—I think there is six or eight lots; I am not sure which.

2048 Q. Six lots.

A. Six lots at that time would be worth $800.00. Where Drummond lives that would be about four hundred dollars. Mr. Polk's place, two little houses on it, I believe at that time was worth $500.00.

2049 Q. What was the condition of the two houses upon the Polk property which you mentioned in your answer to a previous question at that time?

A. A very poor condition. I done some work up there.

2050 Q. What value, if any, would the two old houses upon that property have been at that time upon the market?

A. I would not give $50.00 for both of them.

The plaintiff objects to the answer and moves to strike out the answer as not responsive.

2051 Q. Would $50.00 have been their value upon the market at that time?

213 Objected to as leading.

2052 Q. State the facts in relation to that.

A. If I owned the property I would give a man fifty dollars to move them off.

Objected to, and plaintiff moves to strike the answer out as not responsive.

2053 Q. State the condition of the buildings, if you knew of their condition, at that time.

A. They were clapboarded outside. The siding, there was holes in it, where the birds built their nests. You could see clear through the house. There were no steps, the foundation were completely cracked down, and the house leaned over in a horrible condition. The roof—you could go into the inside of the house and look clear through the floor and through the roof.

2054 Q. If you know the condition of the surveyor general's property—that is, built upon these lots known as the surveyor general's property—at that time state it.

A. I never worked any on that building. The building I know was cracked and has been ever since I knew it. It was in bad shape, the windows all broken out. I passed there on several occasions, mostly every month of the year, back and forth, but I never done any work upon it. It was in very poor condition and always has been.

2055 Q. State whether or not at that time it was inhabitable or rentable.

A. I do not think it was rentable.

Cross-examination by Mr. CLARKSON:

2056 Q. Who employed you to do work on the Slater property?

A. Mr. Polk.

2057 Q. At what time was that?

A. Last spring.

2058 Q. In the spring of 1889?

A. Yes, sir.

214 2059 Q. When did you do work on the Polk property?

A. About five years ago was the first work I ever done on it.

2060 Q. Who employed you to do that?

A. I think it was a sister of the man that lived there by the name of Duncan. He use to build cisterns. I done some work for him. He was renting.

2061 Q. Do you know from whom?

A. No, sir; not at that time. I did not know anything about that.

2062 Q. How many lots in the Polk property?

A. I think four.

2063 Q. How many in the Drummond property?

A. There is six.

2064 Q. And you put your value on the six lots at $400.00?

A. Yes, sir.

2065 Q. And the four Polk lots at $500.00?

A. No; I think there is six lots in each part.

2066 Q. Do you know of any sales made of property in the vicinity of this Davis estate property along in the latter part of 1885?

A. No; I do not.

2067 Q. You cannot recollect any sales?
A. No, sir; not any.
2068 Q. Do you base your opinion as to the values of this property from having worked upon it?
A. From what I had bought property myself at.
2069 Q. How many purchases did you make in 1885?
A. I made two.
2070 Q. What time of the year?
A. One was in April and one in July.
2071. Where were these purchases?
A. In Plattsmouth.
2072 Q. What part of the city?
A. On the south part.
215 2073 Q. How far from this Davis property?
A. It would be about four blocks from the business centre.
2074 Q. What, if any, purchase did you make in the early part of 1886.
A. None in that part of town. I bought in the west part of town.
2075 Q. What purchase did you make in 1884, if any?
A. I made a purchase in 1884 of ten acres.
2076 Q. Whereabouts?
A. Close to the machine shops.
2077 Q. How far from the Davis property?
A. A quarter of a mile.
2078 Q. Was that one purchase of ten acres the only one you made in 1884?
A. That is all; yes, sir.
2079 Q. Did you say you bought some in the early part of 1886?
A. Yes; I did, in the west part of town, in a new addition—Mercer's addition.
2080 Q. How far was that from the Davis property?
A. A mile and a half—probably two miles.
2081 Q. What sales did you make in 1884?
A. I sold one house and lot.
2082 Q. Where were they?
A. Four blocks from Main street.
2083 Q. Which direction from the Davis property?
A. South.
2084 Q. What sales did you make in 1885?
A. I do not think I made any in 1885?
2085 Q. Did you make any in the early part of 1886?
A. Yes, sir; I bought and sold a house in 1886.
2086 Q. Where was that?
A. Close to the same house that I sold in 1884—a house that I had built myself.
216 2087 Q. Can you now give the block that is in?
A. Yes, sir.
2088 Q. And lot?
A. Yes, sir.
2089 Q. What were they?

A. The first house in 1884 was block 56, lot 6, and the house I sold in 1886 was lot 5, block 56; lot 4, block 56, I sold; this was all improved property, houses and everything on; the houses I built myself.

2090 Q. Of the purchases and sales which you have given, the only ones that you can recollect of having made — in 1884 and 1885 and 1886?

A. No; I bought property where I live in 1886.

2091 Q. Where is that?

A. In the same block that those I have already given you, only on lot- 10, 11, and 12, in block 56.

2092 Q. What time of the year was that purchase made?

A. That was in September, 1887.

2093 Q. When was the last sale you speak of made?

A. In 1887.

2094 Q. What time of the year was it?

A. I really forget; I cannot answer that now; I could if I had thought of referring to my book, but I could not just exactly tell; it was, anyhow, I think, in the spring of the year, because I had about where I am now in the fall—no, I think I purchased that where I live now in 1887 and sold those two houses in 1887. In the spring of 1887 I sold my last house and bought where I am in September, 1887.

Re-examination by Mr. COVELL:

2095 Q. Comparing the values of the pieces of property which you bought and sold in 1884 and 1885 with the property concerning which you have been questioned, known as the Ella V. Davis estate, or that part of it where the Drummonds live and where Mr. Polk lives, and the surveyor general's property, which had the greatest value on the market, the property that you bought and sold or the specific pieces of property to which your attention has been directed as belonging to the Ella V. Davis estate?

217

Objected to as calling for the opinion of the witness, and he not having shown himself competent to judge of the values of real estate.

A. I bought the lots that I referred to in block 56, those lots that I referred to in 1884. I bought a lot from John H. Cox, of Council Bluffs, for one hundred dollars cash, and in 1885 I bought one from J. B. Strode adjoining that sale block that was lot four; I bought of him for $150.00. J. B. Strode had lots 3 and 4 in the same block. That was in 1885. He sold me 4 and Dr. Shelleneck 3 at $150 apiece. These lots to-day, without any improvements, could not be bought for $400.00 — less than that. Dr. Shelleneck's is not improved yet. I do not think that I would take any less than $400.00 for them.

2096 Q. What I was calling for, in the year 1885 which had the greater value per lot, the property that you purchased and sold,

concerning which you have answered, or the property known as the Drummond property and Polk property, per lot?

Objected to for the same reason as last above.

A. Those that I bought were more valuable. They were closer to town by two blocks; on level ground also.

2097 Q. Do you remember the circumstances of Jane Bird buying three lots across the street from the Drummond property in the latter part of 1885 or the spring of 1886; and, if so, do you know what she bought these lots for? If you do, state it

Objected to for the reason that it is a cross-examination of defendants' own witness.

A. No, sir; I do not.

The signature of this witness to this deposition is waived by all parties.

218 MILTON D. POLK, of lawful ago, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposes and says as follows:

2098 Q. You have been sworn before in this case?

A. Yes, sir.

2099 Q. In your cross-examination by Mr. Clarkson some time ago a quitclaim deed was mentioned as having been made to Thomas W. Shryock and wife for the property that is now known as the Leonard property, and which in that cross-examination was stated to have been made by them to you. You may state whether or not that quitclaim deed is now in your possession or under your control; and, if so, you may state all the facts relating to that deed which are within your recollection, and how that deed came to *me* recorded as having been made by Shryock and wife to you for the property now known as the Leonard property, upon which the Ella V. Davis estate formerly held a mortgage known as the Shryock mortgage.

A. Yes. The deed is in my possession, and in testifying before I had forgotten about the deed. It had not occurred to me, and I called on Shryock and we talked of the matter.

Objected to anything that occurred between the witness and Shryock.

The WITNESS: Without refreshing my memory about the matter, I can testify positive that the deed was made in blank, executed in blank, and that my name was inserted in the deed at the time that I purchased the property.

2100 Q. When was that?

A. That was in the early part of 1886. I am not sure who had the deed executed in blank, whether it was Mr. Windham or Mr. Chapman or myself.

2101 Q. You may state what you mean by the deed being executed in blank.

A. I mean it was signed and acknowledged without naming the grantee.

219 2102 Q. Was that all the blank that was left in the deed as not having been fil-ed at the time of its execution?

A. It was.

2103 Q. You may state who inserted the name of the grantee in the deed and how it came to be inserted there.

A. I inserted it myself. There it is in my handwriting; the only part of the deed that is in my handwriting. I inserted it in there. I know of no particular reason why except I thought it would make the title clearer.

2104 Q. When was this done?

A. It was done at the time that the purchase was made.

2105 Q. When was that deed recorded?

A. I could not tell from my recollection, but I see it was recorded on the 21st day of January, 1886.

2106 Q. State whether or not that was the time of the insertion of the name of the grantee in the deed.

A. Yes; it was done at that time that the purchase was made.

2107 Q. When was that deed recorded?

A. I could not tell from my recollection, but I see it was recorded on the 21st day of January, 1886.

2108 Q. State whether or not that was the time of the insertion of the name of the grantee in the deed.

A. Yes; it was done at that time.

2109 Q. State whether or not you made the purchase of the property from O'Donohoe at or about that time.

A. I did.

2110 Q. Is that the paper you hold in your hand, which is the quitclaim deed, referred to heretofore in the testimony and to-day in your testimony?

A. Yes, sir.

The deed referred to is offered in evidence and a copy of the same is hereto attached, marked Exhibit —.

220 Cross-examination by Mr. CLARKSON:

2111 Q. Did you insert your name in this deed with reference to your sale to Leonard?

A. I suppose not. The deed came into our hands in blank, and I thought it was — well to insert my name as to insert the trustee's name. I did not suppose it made any material difference.

2112 Q. You notified the trustee of the fact that you had done that, I suppose?

A. No; the trustee had deeded the property away, so that I did not notify him anything about it.

2113 Q. At the time you inserted your name in the deed were the papers of conveyance from you to Leonard prepared?

A. I am not sure as to *what*. I could not tell you. I do not remember. I do not suppose they were.

2114 Q. Did Mr. Leonard see this quitclaim deed with your name in it?

A. I do not know that he ever did.

2115 Q. Dis his attorney?

A. Not that I know of.

2116 Q. At the time that you inserted your name in this deed whose title were you trying to fix up?

A. Well, no one's in particular, but having the blank deed before me I thought I might as well put my name in it as the trustee's. In fact, I thought it better, and did it that way.

2117 Q. Were you not trying to fix up your title, and not the trustee's title, at that time?

A. I presume I was. The trustee, as I thought, had passed his title, or all he had.

2118 Q. You say that this deed is now under your control?

A. Yes, sir.

2119 Q. Had you control of it at the beginning of the examination of this case?

A. I think so. My clerk found it in the safe, and I pre-
221 sume it was there all the time.

2120 Q. When did he find it there—since you were down here the last time?

A. I had forgotten all about tho deed until the matter was brought up when you were taking testimony at Plattsmouth.

2121 Q. Was this deed handed over to Mr. Leonard at the time that you conveyed to him?

A. No; I reckon not. If it had been handed to Leonard I did not suppose it was in my safe. That is the principal reason that I do not think it was handed over to him.

2122 Q. What date did you get it out of your safe?

A. Mr. Root found it in the safe. I could not tell you what day, only I know it was since the testimony was taken down there.

2123 Q. Did you ask him to look for it?

A. I am not sure but what he suggested that he had seen that deed in the safe somewhere when we were talking about it, and he looked it up.

2124 Q. When did you put it there?

A. Really I do not know. I suppose I put it there some time after it was recorded—when it came into my hands. It might have been six months afterwards or three or four weeks.

2125 Q. What is your remembrance as to the time that you got it from the recorder's office after you filed it for record?

A. I do not recollect; in fact, I had forgotten about the matter until the testimony was taken down at Plattsmouth.

Redirect examination by Mr. COVELL:

2126 Q. You may state whether or not at the time when you inserted your name in this quitclaim deed as the grantee in that deed that all the property to which the estate of Ella V. Davis had title had been deeded by the trustee, Alexander H. Robertson, who is the plaintiff in this cause, to Michael O'Donohoe.

A. Yes; it had been.

222 2127 Q. State whether or not at that time the deed from Alexander H. Robertsin to Michael O'Donohoe for all the property to which that estate had title had been delivered to Michael O'Donohoe.

A. It had.

2128 Q. Then when you inserted you- name as grantee in that deed had the property been deeded by Michael O'Donohoe to you?

A. It had.

2129 Q. That had formerly been deeded by Robertson to him?

A. It had.

Recross-examination by Mr. CLARKSON:

2130 Q. How do you recollect the fact that the property had been deeded by O'Donohoe to you before you inserted your name in this deed and cannot recollect the fact of whether or not you had prepared you- deed to Leonard?

A. I know that I should not have inserted my name in there without that transfer had been made. I am positive in regard to that in that way. As to the actual transaction itself, of course I could not recollect, but I know that I would not have placed my name in there had not the transfer been made.

2131 Q. What necessity was there for your inserting your name in this deed after you had the deed from O'Donohoe?

A. I did not presume there was any necessity for it, but we had the deed in blank and I thought maybe it might clear up the title better.

2132 Q. Did any one ask you to do it?

A. Not that I remember of. I think not.

The signature of this witness to this deposition is waived by all parties.

The further taking was adjourned until 2 o'clock, at the house of George S. Smith, on account of sickness of the witness.

223 GEO. S. SMITH, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, examined in chief by Mr. COVELL, testified as follows:

In the year 1885 and for some years prior thereto I resided in Plattsmouth. I resided from 1870 to 1885. While I lived in Plattsmouth I was engaged in the practice of law.

2133 Q. State whether or not, while so practicing law there, you had occasion to examine the titles of real estate and look into the values of real estate on the market in the city of Plattsmouth, Cass county, Nebraska.

A. I did; frequently.

2134 Q. You may state whether or not you knew the property that was formerly called—that which belonged to the Early estate and later that which belonged to the Ella V. Davis estate, in the city of Plattsmouth, while you resided there.

A. Yes, sir.

2135 Q. What official position did you occupy under the Government of the United States during a part of the time that you resided in the city of Plattsmouth?

A. I was surveyor general of the United States for the State- of Iowa and Nebraska.

2136 Q. As such surveyor general, state what place did you occupy as an office in the city of Plattsmouth.

A. Near the corner of Sixth and Main street- first and the latter two years, I believe, it was on the corner of 6th and Oak streets.

2137 Q. You may state whether or not you and your predecessor occupied as an office the property known in Plattsmouth as the surveyor general's property, being part of the property belonging to the estate of Ella V. Davis, deceased.

A. Yes. The surveyor general's property was located and remained there until John R. Clark, my predecessor, was nomi-
224 nated and confirmed. Shortly after that time he moved it down on the corner near Sixth and Main.

2138 Q. State, of you know, the values on the market of the property on Main street belonging to that estate, known as the Slater property, being the west 20 feet of lot 12, in block 29, in the city of Plattsmouth, and also the property that was known as the surveyor general's property, and also the property where Mr. Drummond now lives, and also the property upon which Milton D. Polk now lives, and also the property which is now known as the V. V. Leonard property, being the east half of lot ten, in block 28, in the city of Plattsmouth, during the year 1885 and the first four months of the year 1886.

A. I knew where all the property you have described was, and was well acquainted with its location and knew its value.

2139 Q. You may state whether or not during your residence in Plattsmouth you had occasion to deal in real estate to any extent and, if so, to what extent and how you became familiar with the values of real estate on the market in the city of Plattsmouth.

A. I have dealt a good deal in the city of Plattsmouth in the real estate, and a lot of my dealing was within one block of this property that you call the Drummond property and where Mr. Polk now lives and within three blocks of where the old surveyor general's office was. On Main street I have dealt to some extent; owned two or three lots on that street and disposed of them.

2140 Q. Take all of this property together belonging to the estate of Ella V. Davis, deceased, and state what, in your best judgment, was the value on the market in the city of Plattsmouth in December, 1885, or rather from September, 1885, to December, 1885, inclusive, and during, say, four months of the year 1886, if it had been sold in a body.

Objected to as incompetent, irrelevant, and immaterial, and that the witness has not shown himself competent to judge as to the values of real estate.

225 2141 Q. I was trying to buy that property once myself. I think I offered $3,800.00 for it and I thought it was a big

offer. About the time I was living there my judgment is that the property was not worth more than $3,800.00 in money. Taking it altogether as it was, it was not worth more than that.

2142 Q. State what the condition of the surveyor general's property and of the Drummond property and the property where Mr. Polk resides now at or about the time or within a year of the time or a year before the time when you left the city of Plattsmouth?

Objected to as irrelevant, immaterial, and incompetent.

A. As the old surveyor general's office was built in a very early day, from the looks and appearance of it. It stood there as an old landmark when I first went to Plattsmouth, in 1870. It was illy constructed, and the use of it as a public office had very much disorganized it, taking out partitions and making such changes as to make it almost unfit for a private residence. Then it had cracked so that it was, I think, one of the reasons why the surveyor general's office was moved from there, that they considered it unsafe for the public records. I thought it in a very delapidated condition; the grounds were not taken any care of, except right around the house. There was some five or six lots in the place. The Drummond property was simply lots. It had never been fenced, and laid upon the hill by an ungraded street. On the east side was a street without any identity. I do not know whether it is now or not. The property that Mr. Polk now occupies was built about the time that I built my house in 1871, and it was within a block of my house. They were built by making a little ditch in the ground about six or eight inches and laying a brick foundation; no cellar or anything of that kind. On one corner was quite a sloping hillside. They were painted. Two of them built together. Cattle were running at large and it was not but two or three years until the ground began to give way from the southwest cor-
226 ner of the north house, so that the foundation was no longer on the ground, and consequently it was just left go that way. It was rented to parties for a year or two. They could not rent that house at all for awhile. The two houses were kept up in repair for a couple or three years and then commenced to run down, and I think ten years elapsed before any repairs of any kind were put upon them. As a matter of fact, if I was going to buy the lots I would not give anything for the houses. I did not take that into consideration in estimating the value of the whole property because there was more than one lot of those two houses. They stood on one lot. I would think the two houses and two lots as they there stood in 1885, when I last saw them—I would think they were well worth $500.00; that would be the value I would place upon them.

2143 Q. State if you continued familiar with the value of property after you left there in 1885.

A. Yes, sir; I sold a lot within a block of this very place and know of other lots being sold *of* where Mr. Polk lives, I think, a year after I came here or probably more than that, and it was much larger than he has got—65 foot by 140.

2144 Q. You may state whether or not up to the first of May,

1886, the value of property advanced in the city of Plattsmouth after the time when you made the offer which you did for the property of the Ella V. Davis estate or whether it depreciated.

A. If it advanced all the business men kept it gloriously from me, because I had property to sell and did sell it after that time, and my knowledge was that it did not.

2145 Q. Were you frequently in the city of Plattsmouth after you moved to Omaha?

A. Probably every week.

2146 Q. When did the property begin to enhance in price in the city of Plattsmouth after you moved away from Plattsmouth to Omaha, of your own knowledge?

227 A. The best answer I can make to that is, after I sold all of mine.

2147 Q. When did you make the sale of the last of yours?

A. I think about two years ago it began to look up. About a year ago I sold the last of mine. Two years ago there began to be inquiries about this property. I did not know that there was any change very much.

2148 Q. About the time when property began to increase down there was about the time known down there as Mercer's boom?

A. Yes, sir; just about that time or a little before that.

2149 Q. That was in the spring of the year 1887?

A. Spring or fall; somewheres along there.

2150 Q. At what price did you sell the lot that you mentioned as being 65 feet by 145 back? State when the property occupied by Mr. Polk—when did he sell it.

A. I sold that lot to a man named Thomas Murphy, that bought the other property. I think I sold it for $75.00.

2151 Q. State whether or not it was as good or better a lot than any one of those contained in the Polk property or Drummond property considered as lots.

Objected to as calling for a conclusion of the witness and not shown himself competent to judge of the values of real estate.

A. Only so far as it was larger. It laid very similarly to most of the lots that Mr. Polk bought of the Early estate or Davis estate that were unfenced. I meant on what you call the Drummond lots.

2152 Q. Then lots that had less front and were of less depth belonging to the Ella V. Davis estate were of less value than lots you sold, were they not?

Objected to as argumentative.

228 A. They did not have but one lot, except the Main street, that I would have traded that lot for. They were of much less value, I think.

Cross-examined by Mr. CLARKSON:

2153 Q. To whom did you make the offer of $3,800.00?

A. I think I made it to John W. Barnes, who was talking of going on to Baltimore to see the parties that owned the property.

2154 Q. You asked Mr. Barnes to convey that offer to the parties in Baltimore?

A. No; I do not think I did that. I think I said I will give $3,800.00 for that property. If you can make a dicker go it.

2155 Q. Did that include all the property?

A. It included all the property that is spoken of here.

2156 Q. It included the Leonard lot?

A. Yes. That was the lot I was trying to get after, the Leonard and Slater lot.

2157 Q. What value would you put upon the Leonard property in December and January?

A. I would put about $1,200 or $1,250.00 upon the Slater property at the same time. The lot just a little before that, right by it, sold for $1,200.00.

2158 Q. Do you remember the lot and block?

A. No; I do not.

2159 Q. What value at that time would you have put upon that surveyor general's property?

A. I hardly know. I would not have given over $800.00 for it at that time.

2160 Q. You did not put a value on the Slater property? You sold a whole lot right side of it south for $1,200.00. What value did you put on the Slater property?

A. I would give one thousand dollars for it—$900.00 or $1,000.00.

2161 Q. What value would you put upon the Drummond property, consisting of 12 fractional lots, six whole lots?

229 A. About $450.00.

2162 Q. At that time?

—. ——.

2163 Q. On the Polk property at that time?

A. It is a very difficult matter for me to fasten in my mind. I believe I would have torn the house down—probably worth about five hundred dollars, the whole thing, just as it stood, including the house.

2164 Q. Did you move to Omaha in April, 1885?

A. Yes, sir.

2165 Q. From that time your residence has been here?

A. Yes; my business, however, a good deal of it, was unclosed down there. I was down there probably every week and sometimes oftener and sometimes not once in a month for a year or two.

2166 Q. What was your business in Plattsmouth?

A. I was a lawyer.

2167 Q. After you moved to Omaha?

A. I was closing up my business there and trying to sell off my property. I had accumulated a good deal of property in the shape of lots, etc.

Redirect examination by Mr. COVELL:

2168 Q. When did you sell the most of the lots that you had accumulated there?

A. I sold most of them before last year.

2169 Q. Was it before the season you moved your family to Omaha?

A. The most of them, I think, was before. The most of the outside lots I sold before.

2170 Q. Those that you retained, when did you sell those—before or after the year 1886?

A. After the year 1886.

2171 Q. Up to the time when you sold the last of them were you able to get any more per lot than when you sold those which you did sell prior to the time when you moved to Omaha on the market?

230 Objected to as calling for a conclusion of the witness.

2172 Q. I sold one-half of it for what I gave for it, and it has been sold within the last six months for the same price on the corner of Vine and Sixth streets.

2173 Q. How far is the corner of Vine and Sixth streets from the property occupied by Mr. Polk?

A. That is six blocks immediately towards Main street. It is only two blocks from Main street.

2174 Q. North or south?

A. North.

2175 Q. The property that you sold there is situated much nearer business than the property where Drummond and Polk lives, is it not?

A. Yes, sir.

The signature of this witness to this deposition is waived by both parties.

The further taking of testimony is adjourned until Tuesday, the 29th, at 10 o'clock.

OMAHA, NEB., *Oct. 29th*, 1889.

By agreement of parties the taking of testimony is adjourned until November 7th, 1889.

I hereby certify that, in accordance with the stipulation and agreement of the parties hereto, a copy of which is attached to the depositions taken upon the part of the complainant, I attended at the taking of the depositions of L. E. Skinner, Milton D. Polk, James S. Mathews, V. V. Leonard, L. C. Stiles, John Waterman, Henry Bons, and H. C. Ritchie, the foregoing witnesses, at the office of Beeson, Polk Bros. & Root, in the city of Plattsmouth, Cass county, Nebraska, and at the office of Congdon, Clarkson & Hunt, in the city of Omaha, Nebraska, at the various times mentioned in the aforesaid depositions, and that said witnesses were duly sworn
231 by a notary public to tell the truth, the whole truth, and nothing but the truth, and that the testimony of the said witnesses was by me taken in short-hand and was by me reduced to writing, and that the above and foregoing is a true and correct copy of my short-hand notes of the testimony of said witnesses, whose signatures to said depositions were waived by the parties hereto.

Dated at Omaha, Nebraska, this 27th day of November, 1889.
H. M. WARING.

In the Circuit Court of the United States in and for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee, Complainant,
vs.
SAMUEL M. CHAPMAN *et al.*, Defendants.

The further taking of testimony in the above-entitled case was continued and resumed at the office of Congdon, Clarkson & Hunt, in the city of Omaha, Nebraska, on this 27th day of November, 1889, by stipulation of the parties hereto.

Present: Joseph R. Clarkson, solicitor for the complainant, and George W. Covell, solicitor for the defendant-.

C. H. PARMALEE, a witness heretofore sworn and examined, was recalled by the complainant and testifies as follows:

Examined by Mr. CLARKSON:

2176 Q. Judge Chapman testifies in this case that he and Mr. Robertson, the complainant, had an interview with you with reference to the value of the property in controversy, and that you put the value at $3,500. You may state whether that is so, and, if so, what reason you had for putting the value at $3,500.00.

The defendants object as incompetent and immaterial.

A. I don't recollect of meeting Judge Chapman and this man Robertson together at all. I don't think that I did in re-
232 gard to the $3,500.00, but I had just such a conversation with Judge Chapman.

2177 Q. On your direct examination you testified that you did not remember of meeting Robertson, and on cross-examination by Mr. Covell your memory was refreshed and you recollected the fact you had met Mr. Robertson and Mr. Chapman together.

A. That might be, but I don't think we had any conversation. I saw him and was introduced to him by somebody, but I do not know whether it was Chapman; but it is likely it was; but I had no conversation with this man Robertson to amount to anything is my recollection about it.

2178 Q. Did you put a valuation on the property of $3,500.00?

A. I did to Judge Chapman, but not to Mr. Robertson.

2179 Q. Was that valuation put on the property in Mr. Robertson's presence?

A. No, sir.

2180 Q. State how you came to put a valuation of $3,500.00 on the property.

The defendants object as immaterial and incompetent.

A. I can explain that exactly; it was represented to me that they

had the sale of this property and they could sell it at any price they was a mind to, but that they wanted to make a kind of a reasonable showing as to price, and I remarked to Judge Chapman, says I, " If you are going to sell it for any price that you are a mind to you just as well sell it for the price of $3,500.00 as well as $4,000."

The defendants move to strike out the above and foregoing answer of the witness as incompetent, irrelevant, and not proper rebuttal.

2181 Q. Mr. Polk testified in his cross-examination in answer to this question, which reads as follows: " You did not go to him (meaning Parmalee) — that this man (meaning Robertson) was here, and that you thought you could buy that property for
233 $4,000.00, and ask him to state a figure of $3,500.00 to $4,000.00 in case Robertson came to ask him for a price on it?" To that question Mr. Polk answered, " No, sir." You may state what the facts were in regard to that.

A. If I understand that now, Mr. Polk says he came to me. Is that right?

2182 Q. Mr. Polk says he did not come to you.

A. That he did not come to me?

2183 Q. That is the question put by the examiner to Mr. Polk on his cross-examination, " You did not come to him (meaning Mr. Parmalee) and say to him that this man (meaning Mr. Robertson) was here, and that you thought could buy that property for $4,000.00, and ask him to state a figure of $3,500.00 to $4,000.00 in case Mr. Robertson came to ask him a price on it?" and to that question Mr. Polk answered, " No, sir." What were the facts in that regard?

A. He did come to me and requested me to put a price at $3,500.00 to $4,000.00, but at this time when he came this man Robertson was not there.

2184 Q. Do you know whether Mr. Robertson was expected at that time?

A. He was expected, so they said. Mr. Polk told me he would be ther-.

2185 Q. What else did Mr. Polk say to you with reference to Mr. Robinson's visit?

The defendants object as not rebuttal, as improper testimony, irrelevant, incompetent, and immaterial.

A. He said to me that he would go and see some dealers—that he would go and see some men—that he could talk with, such men as he could arrange with to put the price at about such a price, and he said he would see them men.

2186 Q. What, if anything, was said by Mr. Polk as to Mr. Robertson wantin- to sell the property and there being a chance to buy it?

A. He said he wanted to sell it or had the sale of that. He said him or them. I think he used the words, " We have the sale of it."

234 2187 Q. How long before Mr. Robertson's visit was this conversation with Mr. Polk?

A. I could not state that, how long it was; it might been a month and it might not have been so long, and it might have been longer.

2188 Q. Did he mention any names of those to whom might be the first men he would take Mr. Robertson to?

A. Well, if he did—he did state one name and that was Mr. Wise, but if he stated any more I don't remember, but I recollect why he said Wise; he gave a little reason for that.

2189 Q. What reason did he give?

A. Well, he remarked he was satisfied he could get Wise to put the price where he wanted it.

2190 Q. What did he say with reference to any others to whom hs might take Mr. Robertson?

A. He only stated he would see them. He gave me the idea that he was going to see them beforehand, and he would take this man Robertson to such men as he saw would put the price where he——

Cross-examination by Mr. COVELL:

2491 Q. At what particular place do you say this conversation took place between you and Mr. Polk?

A. In Mr. Polk's office, I think, but I may have met him on the street at some time and had some talk with him.

2192 Q. Which part of Mr. Polk's office—in which room?

A. We first went into the room—the south room—fronting on Main street, what you might term the front room; Mr. Chapman was there and I think Mr. Beeson was there; no, I guess not, but somebody else was there; I don't know who; at any rate we were talking the matter over there and somebody came into the room and

235 we adjourned to the next room directly north of it, Mr. Polk and myself, but whether anybody else went in with us I am not sure, but there may have been. We left the room Mr. Chapman was in and left Mr. Chapman in the front room in there and went into the north room and had some conversation there.

2193 Q. What month and what year did you say that conversation occurred?

A. I will be switched if I will tell you.

2194 Q. Is this conversation that you testified to in chief a part of this conversation?

A. Yes, sir.

2195 Q. Can you fix any time or anywhere near the time when you say this occurred?

A. The time of year?

2196 A. Yes, sir.

A. I declare I don't believe I can fix the time of year.

2197 Q. Was it in September, 1885?

A. I am not positive about that.

2198 Q. Was it in October, 1885?

A. I could not say that it was.

2199 Q. State whether or not it was on the 5th day of September, 1885.

A. I could not state that.

2200 Q. State whether or not it was from the 5th to the 8th of October, 1885.

A. I would not state that, sir.

2201 Q. State whether or not it was prior to the first day of September, 1885.

A. I could not state that, sir.

2202 Q. State how long before Robertson came there to see the property and how long before you met Mr. Robertson or knew he was there that it is that you say this conversation occurred
236 between you and Milton D. Polk.

A. It might have been a month and it might have been longer and it might have been less.

2203 Q. You say that Mr. Polk stated in that conversation that they, meaning him and Chapman, then had the sale of the property belonging to the estate of Ella V. Davis?

A. I don't know who were the persons composing the firm then, but I am quite sure he used the word "we."

2204 Q. You are quite sure that he stated that "we have this Davis property for sale," are you?

A. Yes, sir.

2205 Q. In which room, the north or south room, of Polk & Chapman's office was it he stated this?

A. I think in the south room.

2206 Q. Who was present when he said it, if anybody?

A. Judge Chapman was there.

2207 Q. How far was Judge Chapman from you in that office?

A. I could not say, but I presume he was on one side of that tabl- in there.

2208 Q. He was sitting on one side of that large table, was he?

A. Yes, sir.

2209 Q. And you and Mr. Polk on the other?

A. I think so, sir.

2210 Q. How many feet would you be apart, then?

A. Not more than 5 or six feet.

2211 Q. You testified on your examination-in-chief that you met Mr. Robertson when he came there, and told him that that property was not worth over $4,000.00 and probably not over $3,500.00, and that $3,500.00 was all that you would give for it. Which time are you telling the truth, now or the other time?

A. When you come to telling the truth, do you suppose I am telling an untruth? Would you like to have me tell the—all the truth?
237 2212 Q. You can answer that question.

A. I don't think, sir—I am not sure that I testified on my examination-in-chief that I met Mr. Robertson. I am not positive that I did, but I think I did, though. I might tell something you don't want told.

2213 Q. I don't care what you tell so far as that is concerned. Are you positive now whether you ever met Mr. Robertson or not?

A. I think I met him.

2214 Q. In what month was it that you met Mr. Robertson?
A. I could not state.
2215 Q. Can you refresh your recollection in any way and state whether or not it was in October or September, 1885?
A. I have no way to do that now; to give you the exact date.

Redirect examination.

By Mr. CLARKSON:

2216 Q. You may state which part of the conversation between you and Mr. Polk occurred in the south room and which part in the *south* room as you now remember it.
A. We first went into the south room, and I was told that they had this property for sale, and that they were the attorneys for this man Robertson, and that they had the property for sale, and we talked some more there and then went into the north room, and it was in the north room that Mr. Polk talked about seeing these real-estate dealers and arranging what they would value it at to this man Robertson.
2217 Q. Was Judge Chapman present in the north room during this part of the conversation you have just given?
A. I think not, sir; I am confident he was not.

Plaintiff rests.

238 I hereby certify that in accordance with the stipulation of the parties hereto I attended at the taking of the testimony of C. H. Parmalee, the foregoing witness, at the office of Congdon, Clarkson & Hunt, in the city of Omaha, Douglas county, Nebraska, and that the said witness was duly sworn by a notary public, and the evidence of said witness was taken in short-hand by me and was by me reduced to writing, and that the foregoing is a true and correct copy of my short-hand notes of the testimony of said witness, whose signature was waived by the parties hereto.
In witness whereof I have hereunto set my hand this 3rd day of December, A. D. 1889.

H. M. WARING.

MILTON D. POLK recalled for *on* and on behalf of the defendants.

Examined by Mr. COVELL:

2218 Q. You may state whether or not you ever at any time had with Mr. Parmalee in the north room of your office, in the city of Plattsmouth, in the Fitzgerald block, in that city, any conversation whatever in which you made any statement to Mr. Parmalee such as he has testified to in his examination-in-chief and a cross-examination, redirect examination, and recross-examination here to-day in reference to any arrangement which you expected to make with any dealers as to the price to be put upon the Ella V. Davis property, and whether or not you had any such conversation either in the south room of your office, in that city, or in the north room

of your office, in that city, and such as Mr. Parmalee has testified to here to-day.

A. No, sir; I never had such a conversation.

2219 Q. State whether or not you ever had, either on the streets in the city of Plattsmouth or anywhere else at any time, either prior to the time when Mr. Robertson came to Plattsmouth to see about the property of the Ella V. Davis estate or after he
239 came to Pattsmouth to see about it, any conversation with Mr. Parmalee such as he has testified to here to-day.

A. No, sir; I never had, and I would like to say right here that it is false, especially in reference to his statement in regard to Will. Wise. Wise has never been a friend of mine.

2220 Q. Did you ever mention to him at any time or place, either before or after Mr. Robertson came to Plattsmouth to look after the property of the estate of Ella V. Davis, that you only needed to see W. S. Wise and that you could get him to put any price on the property of the Davis estate that you wanted?

A. No, sir; I state that that is absolutely false and untrue, and that, further, Wise and I have never been on good terms and he would be the last man in the world I would ask anything from.

2221 Q. Did you ever mention at any time, either before Mr. Robertson came to Plattsmouth or after he came to Plattsmouth or while he was there, to Mr. Parmalee or to anybody else the names of anybody to whom you expected to go and could get the price — the property of the Ella V. Davis estate down to such a figure?

A. No, sir; I never mentioned it to him because I never had intended to do it nor I never had any inclination to do so.

2222 Q. Did you ever tell Mr. Parmalee that "we," meaning yourself and Judge Chapman, had the sale of the Ella V. Davis estate property before the time Mr. Robertson came to Plattsmouth or after he left Plattsmouth and went back to Baltimore?

A. I state positively no as to it before he came to Plattsmouth, but after he came there I don't know. I might have had some conversation with Mr. Parmalee after he was there.

2223 Q. You may state if you had any such conversation with Mr. Parmalee after Mr. Robertson was there with reference to the property of the Ella V. Davis estate as he has testified to here to-day.

A. No, sir.

(Excused.)

240 Defendants rest.

It is hereby stipulated and agreed by and between the parties hereto that the amount due on the mortgage notes, as alleged in the petition, is the true and correct amount of the principal and interest; and it is further stipulated and agreed by said parties that on the 19th day of September, 1889, the original mortgage given by O'Donahoe to Robertson was not in the office of the register of deeds of Cass county, Nebraska, and could not be found therein after diligent search, and that since said date the defendant Polk,

in company with the register of deeds, has made diligent search in said office, and said mortgage cannot be found, nor can it be found by said Polk after diligent search among his private papers.

I hereby certify that, in accordance with the stipulation of the parties hereto, I attended at the taking of the testimony of Milton D. Polk, the foregoing witness, at the office of Congdon, Clarkson & Hunt, in the city of Omaha, Douglas county, Nebraska, and that the said witness was duly sworn by a notary public, and the evidence of said witness was taken in short-hand by me and was by me reduced to writing, and that the foregoing is a true and correct copy of my short-hand notes of the testimony of said witness, whose signature was waived by the parties hereto.

In witness whereof I have hereunto set my hand this 3rd day of December, A. D. 1889.

H. M. WARING.

BYRON CLARK, sworn for the defendant-, examined in chief by Mr. CLARKSON, testified as follows:

2224 Q. You knew the Davis estate property in 1885?

A. I knew of the Davis estate. I was not acquainted with all of the property.

241 2225 Q. Did you ever make an offer for that property to Judge Chapman?

A. Yes, sir.

2226 Q. What was the amount of your offer, and when was it made, and what property did it embrace?

Objected to as not rebuttal testimony and incompetent.

A. I did some time, if I remember right, in the spring of 1885. I offered Judge Chapman—my impression is my first offer was $2,700.00 for the three half blocks outside of the Main-street property. At that time I knew nothing about the property which we have been calling the Leonard property and the Slater property. These two lots I knew nothing of.

2227 Q. Was that offer accepted?

A. No; it was not.

2228 Q. You knew George S. Smith?

A. Yes, sir.

2229 Q. A prior resident of Plattsmouth?

A. Yes; I am well acquainted with him.

2230 Q. Did you know the property that he owned in Plattsmouth at the time that he moved to Omaha?

A. Yes, sir.

2231 Q. What was the general character of the property owned by General Smith as compared with this Davis property?

A. Mr. Smith owned one piece of property which lies a block north of the place where Mr. Polk lives and across the street west. He laid out there what is known as Smith's addition, lying immediately north of his private residence and east of it. To give you a better idea of this I will make this statement, that from Main street to the north side of White's addition, on the west side of that

addition, and then running in a southeasterly direction across White's addition to Wickleweight's addition, there is a gradual slope, and that from the point mentioned north the surface of the
242 land drops down a little and becomes very rough, and even up to the present time, while it is sparsely settled, property decreases in value very rapidly from Polk's property north.

2233 Q. He referred to one lot corner of Vine and Sixth streets?

A. The lot on the corner of Vine and Sixth street-; that is a desirable dwelling place where I live; I bought it this summer; I paid $1,200.00 for the half of what Smith owned there; in other words, he owned lots one and two of that block and I bought the north half of the two lots, paying $1,200.00 for it.

The defendants move that this answer be stricken out as irresponsive and incompetent, irrelevant, and immaterial.

2234 Q. What was the character of the title Smith had to his various pieces of property?

Objected to as incompetent, immaterial, and irrelevant.

A. Smith's addition was in fair shape; I knew nothing wrong of that piece of property which I purchased; it had two tax titles upon it, with a number of years of unpaid taxes. The two tax titles that I refer to is really one tax title affecting the two halves into which the property had been divided.

2235 Q. Do you know James S. Smith?

A. Yes, sir.

2236 Q. Mr. Mathews in his testimony in this case, in answer to question numbered 1606, which reads as follows: "Did you not tell him in that conversation that you knew nothing about the value of that outside property?"

Ans. I do not remember of any such language, and in answer to question numbered 1607, which reads as follows: Did you not tell him you were not familiar with the value of outside property, but you knew the Main-street property pretty well? answered, No, sir. Both of these questions and answers referred to an interview between y-u and Mathews; you may state what was the truth with
243 *with* respect to that conversation.

Objected to as immaterial, irrelevant, and not fixing the time or place at which the alleged conversation occurred.

A. I gave to Mr. Mathews or read to him the values which had been fixed upon this property by some of the witnesses and asked him what he thought of it and what he knew about these values, and he told me he did not know anything about these values of outside property and was fairly well acquainted with the values at that time of the Main-street property; and further told him that he could not fix the value on the three half blocks which lie outside of Main street.

2237 Q. At what time—at the time that Mr. Polk purchased the property, in 1885 and 1886, do you know McLoughlin, of Plattsmouth?

A. Yes, sir.

2238 Q. Do you know of McLoughlin erecting a house in Plattsmouth about the year 1886? And, if so, state about the cost of the house, if you know, and where it was left.

Objected to as immaterial and irrelevant and incompetent and not proper rebuttal evidence.

A. In 1885 or 1886—I think, probably, during those two years—McLoughlin erected a house one block south of what we call the surveyor general's property, at a cost somewhere between ten and eleven thousand dollars. It is upon the same street that this property is located, on Polk's, called the surveyor general's property, I think, upon both the east and west.

2239 Q. Do you know of Drummond's erecting a house on any of this Davis property?

A. Yes, sir.

2240 Q. Do you know about the cost of that house and where it was located?

A. I would think it was about $2,500 or $3,000. I know it is a very nice residence and is located upon the east half of lots
244 1, 2, and 3, block 89, in the city of Plattsmouth, and lots 1, 2, and 3, in block 8, White's addition, and is one of the most conspicuous buildings—places—in the city, overlooking most of the town and a portion of the river.

2241 Q. Do you know of Mr. Dovey's erecting a house in the neighborhood of the surveyor general's property?

A. Yes; he is now erecting a house immediately east of the surveyor general's property which is to cost somewhere from eight to ten thousand dollars, I am informed by him, and which house he desired to locate this summer upon the surveyor general's property.

The defendant moves the court to strike out the answer as immaterial and irrelevant.

2242 *A*. Do you know whether or not work upon the house has been begun?

Objected to as immaterial and irrelevant.

A. Yes; the house is almost done.

2243 Q. State the general advantages of the outside property of the estate as for building property, if any.

Objected to as incompetent and not proper rebuttal evidence and as being a part of the case in chief and not proper at all at any time, as immaterial and irrelevant, and calling for the opinion of the witness, who has not shown himself competent to give an opinion upon such matters.

A. The property where Mr. Polk lives, the half block, is a very nice building place. That is the only lot upon which his house and the one next north of it is located. The other three lots slope off to the east. On the north side of the hill, away from the city, it decreases somewhat in value. Lots 4, 5, and 6, in White's addi-

tion, in block 8, and lots 4, 5, and 6, in block 89, of the city, being the property immediately west of Drummond's residence, are nice, choice building lots. The surveyor general's property is a good half a block for building purposes, having on it large oak trees, averaging, probably, a foot and a half in diameter, and at a
245 location where it overlooks a portion of the river and a large portion of the town, both being in the best resident portion of the city as occupied at the present time.

2244 Q. How long have you lived in Plattsmouth?

A. I lived in Plattsmouth—I went there in 1879 and staid there until 1881.

2245 Q. You may state what, if any, transactions you had in Plattsmouth real estate since living in the city of Plattsmouth.

Objected to as improper rebuttal testimony and incompetent.

A. I have not dealt very much in real estate. I have had, I think, about five transactions is all.

2246 Q. What occasion have you had to make yourself familiar with real-estate values?

Objected to as *incompetent* rebuttal and incompetent.

A. I have not had very much occasion, excepting for the purpose of ascertaining the values of real estate which have been in litigation. I have acted as attorney for two or three parties who were dealing in real estate there and knew what they were paying for property and what property was being sold at.

2247 Q. Did you in December, 1885, and January, 1886, know the market value of the Davis estate property?

Objected to as calling for improper rebuttal testimony and incompetent.

A. I thought I did; yes, sir; that is, as to outside property.

2248 Q. What, in your opinion, in December, 1885, and January, 1886, was the market value of the Davis estate property outside of the two half lots on Main street?

Objected to as improper rebuttal testimony, incompetent, and irrelevant and immaterial and as calling for the opinion of the witness, who has shown himself by his answers heretofore to be incompetent to give an opinion for that purpose, either in chief or otherwise.

246 A. I think anywhere from five or six thousand dollars was a fair price on that property at that time that I was trying to buy it.

The cross-examination of this witness is waived by both parties.

The plaintiff offers in evidence a copy of the will of Ella V. Davis as taken from the records of the probate court of Cass county, Nebraska. Objected to as irrelevant, immaterial, and incompetent generally, but not by reason of any informality of the certificate. The copy of the will is hereto attached, marked Exhibit 1.

The plaintiff offers in evidence a certified abstract of the property in controversy certified to by the Midland Guarantee & Trust Company and extending from the 11th day of December, 1885, to the 25th day of October, 1888, for the purpose of showing various conveyances, mortgages, releases, and court proceedings which have been referred to in the pleadings and in the testimony, and the plat attached to the abstract is also offered in evidence. The same is hereto attached, marked Exhibit 2.

The plaintiff offers in evidence a transcript of the proceedings in the circuit court of Baltimore county, Maryland, relating to the appointment of trustees under the will of Ella V. Davis, deceased, for the purpose of showing that plaintiff is legally the trustee of the estate and competent to bring suit.

Objected to on behalf of Samuel Waugh as irrelevant and immaterial and also as being incompetent. The same is hereto attached, marked Exhibit —.

The plaintiff offers in evidence a note of December 10th, 1885, for one thousand dollars, made by M. O'Donahoe to the order of A. H. Robertson, trustee, and payable on or before December 10th, 1888, and endorsed by cash $126.85, for the purpose of showing the amount due on said note, and also offers in evidence note of December 10th, 1885, for one thousand dollars, made by M. O'Donohoe to A. H. Robertson, trustee, payable on or before December 10th, 1888, it being admitted by and between the parties hereto that the signature of M. O'Donohoe to said note is genuine.

247

Objected to any endorsements made upon the back of the notes without further proof thereof; that a part of the testimony offered being incompetent without showing that the amounts paid are all that have been paid upon the note upon which the endorsement appears.

The notes are hereto attached, marked Exhibits —.

The plaintiff also offers in evidence a certified copy of the records of a deed from Michael O'Donohoe and Annie O'Donohoe to A. H. Robertson, trustee of the estate of Ella V. Davis, deceased, of date December 11th, 1885, and covering all of the property in the suit except the east half of lot ten, block 28.

Objected to as being a part of the case in chief and not proper rebuttal testimony.

The same is hereto attached, marked Exhibit —.

Here the taking of testimony was adjourned until the 29th day of November, A. D. 1889.

Certificate.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Charles A. Potter, examiner in chancery, duly appointed by the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that — the several days named

in the depositions hereto annexed I was attended at the places named in the foregoing depositions, in the city of Omaha, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined, and the depositions were reduced to
248 writing, and the reading the same to the witnesses and their signatures thereto were waived by the parties hereto.

I further certify that Exhibits A to I, inclusive, one to 5 (true, exact, and perfect copies of which are hereto attached, marked Exhibits A, B, C, D, E, F, G, H, I, 1, 2, 3, 4, 5), were introduced in evidence in said cause during the taking of said deposition.

Dated ——.

C. A. POTTER,
Examiner in Chancery.

Fees.

Depositions, 663 folios, at 20 cents per folio, for def't	$132 60
" 57 " " " " self	11 40
Swearing 12 witnesses at 10 cents, for def't	1 20
" 9 exhibits at 10 cents each, def't	90
" 5 " " pl'ff	50
720 folios of copies to each party at 10 cts. per folio for each copy	144 00
	290 60
Fees of 10 witnesses for def'ts, one day attendance each	15 00
Mileage	5 20
Total	20 20

Upon the back of said depositions appear endorsements in words and figures following, to wit: No. 257, M. Rec'd May 12, '90, and opened by order of court July 10, '90. Elmer D. Frank, clerk.

249 In the Circuit Court of the United States in and for the District of Nebraska.

ALEXANDER ROBERTSON, Trustee, Complainant,
vs.
SAMUEL CHAPMAN *et al.*, Defendants. } Stipulation.

It is hereby agreed and stipulated by and between the parties hereto that the evidence taken by H. M. Waring as stenographer for and on behalf of the complainant and defendant and certified to by him as being a correct copy of his stenographic notes of the testimony of the various witnesses in the above-entitled cause shall be taken and received by the court as evidence in said cause, and it shall be received by the court the same as if said testimony were taken before an examiner of said court and certified to by such examiner.

Dated November 27, 1889.

CONGDON, CLARKSON & HUNT,
Solicitors for the Complainant.
GEORGE W. COVELL,
Solicitor for the Defendants.

250 In the Circuit Court of the United States, District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee, Complainant, *vs.* SAMUEL M. CHAPMAN *et al.*, Defendants. } In Equity. No. 275, Docket M.

DEAR SIR: You will please take notice that the above-named plaintiff desires the evidence to be adduced in said case to be taken orally under the sixty-seventh rule, in equity, of the Supreme Court, as amended.

You will further take notice that by an order made in said cause by Chas. A. Potter, examiner in chancery of said court, the examination of witnesses on the part of said plaintiff will take place before said examiner, at his office, room 402, First National Bank building, Omaha, Nebraska, on the seventeenth day of June, 1889, at 10 o'clock a. m., and proceed as the said examiner may direct, adjourning from day to day if necessary.

CONGDON, CLARKSON & HUNT &
BYRON CLARK, *Solicitors for Plaintiff.*

To Geo. W. Covell, solicitor for respondent-.

Ordered that the testimony of witnesses for plaintiff in foregoing cause mentioned may be taken before me, at the place therein stated, on the 17th day of June, 1889, at 10 o'clock a. m., such examination to proceed until completed unless adjourned for cause.

It is further ordered that solicitors for respondent- have 20 days' notice of examination.

C. A. POTTER,
Examiner in Chancery.

251 In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee, Complainant, *vs.* SAMUEL M. CHAPMAN *et al.*, Defendants. } No. 257, Docket M. In Chancery

Testimony taken before Chas. A. Potter, examiner in chancery of said court, the 17th day of June, A. D. 1889, pursuant to annexed notice and order.

Present: Congdon, Clarkson & Hunt, sol's for complainant; Geo. W. Covell, sol. for respondent-.

M. O'DONOHOE, a witness on behalf of the complainant, being first duly cautioned and sworn, *was* examined in chief by Mr. CLARKSON, deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. ——.

By agreement of parties the taking of testimony was had in the office of Congdon, Clarkson & Hunt.

I understand that I am one of the defendants in the suit of Alexander H. Robertson *vs.* Samuel M. Chapman *et al.;* I know T. D. Polk; know Samuel M. Chapman; know the property that is in dispute in this case.

Q. A deed was made to you of this property and you gave a mortgage back on this particular property?

A. Yes, sir.

Q. The deed came from Alexander H. Robertson, trustee, to you?

A. Yes, sir.

Q. And you gave a mortgage back to him?

A. Yes, sir.

Q. You may state the circumstances of the giving of that deed and giving back of the mortgage by you; all the circum-
252 stances leading up to it and what passed between you and Milton D. Polk and Samuel M. Chapman or either of them.

Objected to on behalf of Samuel M. Chapman and Milton D. Polk as immaterial and irrelevant and incompetent.

A. You will have to withdraw the name of Samuel M. Chapman, becaus- I had nothing to do with him. I had conversations with Mr. Polk. Milton D. Polk is the man through whom I bought it and through whom I gave the mortgage.

Q. How did you come to buy this property through Mr. Polk?

A. For the reason that I was dealing in property around Plattsmouth myself and trying to make something on it.

Q. What did Mr. Polk say to you in reference to this deal?

A. He asked me if I could buy it and I told him by tightening myself a little I could make a payment on it.

Q. How much did he say you could buy it for?

A. $4,000.

Q. Did you ever pay him any money on it?

—. No, sir.

Q. Was that all that passed between you and Mr. Polk at the time of giving the deed and mortgage or before that?

A. Prior to that time—there was some six or eight weeks passed from the time it was proposed to me to buy it until it was consummated. Milton D. Polk was dealing in real estate, so far as I understand, and property was dull at that time, very low down, about September; prior to that I remember of seeing Mr. Robertson down in Plattsmouth.

Q. I am not asking about Mr. Robertson, but conversations between you and Mr. Polk immediately prior to the taking of this deed in your name and giving by you of the mortgage.

A. Mr. Polk proposed to sell it to me and I bought it; really at the time I bought it in good faith and I was going to make some money on it. I expected there would be a raise of property in Plattsmouth, and my wife had some money in the bank and
253 has it still, as much as would pay the first $1,000; she has it

still in Mr. Patterson's bank. When the deed came back Mr. Polk asked me what I would take for my bargain and I told him I would take a thousand dollars, and it continued that way for awhile; and lastly he agreed to give me $4,800, which was the value of the deed which I have recorded; $4,800 is the deed I have recorded.

Q. At the time that Mr. Polk first spoke to you about buying this property didn't he say that he wanted you to take the deed in your own name and give the mortgage back, but that he wanted to buy the property, and that he would give you $200 to do that?

Objected to as leading and putting in the mouth of the witness the answer desired.

A. He never said he would give me $200.

Q. Did he say that he would give you $100 and $100 to your wife if you would act in that way?

Objected to as leading and putting in the month of the witness the answer desired and incompetent.

A. He said this, that before that time, before I set a value on the place, before I asked $5,000.00—he said he would give $100 to us, and I said no; I would keep the property myself.

Q. And that was with *with* reference to getting the property from you after you had bought it?

A. Yes, sir.

Q. Polk paid you only $83.00?

A. He did, sir.

Q. That is what he paid you out of the $200 promised?

A. Yes, sir.

Q. Then you wrote a letter to Alexander H. Robertson, the trustee, plaintiff in this suit, did you not?

A. Yes, sir.

Q. Is that the letter that you wrote (referring to a letter)?

254 A. Yes, sir.

Q. That is your signature attached to that letter?

A. Yes; that is my signature.

Q. The letter dated August 21st, 1888, to A. H. Robertson, Baltimore, and signed M. O. Donahoe?

A. Yes, sir.

The letter above referred to is here handed to the examiner and marked for identification and then offered in evidence; a copy of the letter is hereto attached, marked Exhibit "A," and made a part hereof.

Objected to as incompetent and seeking to impeach his own witness, incompetent and immaterial on the part of Chapman & Polk.

Q. When you wrote this letter, did it contain the truth as to this transaction?

Objected to as incompetent and leading.

A. Not accurately, sir.

Q. So what you wrote in this letter was a lie?
A. Partly.
Q. You afterwards came to this office on the 17th day of October, 1888, did you not?
A. Yes, sir.
Q. And you had a talk with me.
A. Yes, sir.
Q. By me I mean Joseph R. Clarkson.
A. Yes, sir.
Q. And a clerk?
A. Yes, sir.
Q. And you also had a talk with Isaac E. Congdon, a member of this firm, on that same day?
A. Yes, sir.

255 Q. Did not you in those two talks say in substance this: That you officed in Plattsmouth near Chapman & Polk, and that Mr. Polk came to you and offered you $200.00—$100 for yourself and $100 for your old woman—to engage in the transaction that followed; Mr. Polk was to have this property in suit deeded to you; $1,000 was to be paid down by Mr. Polk and you were to give a mortgage back on the property, securing three $1,000.00 — which were made by you; that on the same day you deeded all the property back to Mr. Polk, and that just prior to the making of the mortgages you explained the whole thing to your wife and told her that you were to have $100 and that she was to have $100, and that there would probably be trouble about it hereafter, and that she told you that Mr. Polk would never give you the $200, and he at that time—that is, you, O'Donahoe—at that time said to her, He has got to give it to me, because I hold a club over him; that finally one of these notes came due and was sent to the bank at Plattsmouth; that you, O'Donahoe, notified Polk, and you then told Polk that you must have the balance of the $200; that Polk always claimed to be hard up and would not give you any money, so you, O'Donahoe, wrote to Robertson and told him all about the transactions? Did you or not on that day in our office tell us in substance as I have stated?

Objected to as irrelevant, immaterial, incompetent, and as seeking by the question to lead the witness which the plaintiff now has upon the stand.

A. I told you a portion of it, but not one-half of what you said.
Q. Where were you officing at the time that you gave this mortgage to Mr. Robertson?

Objected to as irrelevant and immaterial.

A. With Mr. Polk.
Q. What is your business?

Objected to as incompetent, immaterial, irrelevant, and leading.

256 A. Dealing in real estate when I could and practicing law.
Q. Had you been admitted to the bar?

A. Yes; I practiced before you ten years ago.

Q. When you wrote in this letter to Mr. Robertson, "I am not the real and *bona fide* purchaser of the property in this suit of which you are the trustee," is that so?

Objected to as incompetent, irrelevant, and immaterial on the part of Chapman & Polk.

A. I could answer and say that that part of it was right, so far as paying the money was concerned.

Q. I talked with you about 10 minutes ago in Mr. Congdon's room?

A. Yes, sir.

Q. And did not you then and there tell me that the whole transaction of the purchase of this property was a damned fraud from beginning to end?

A. No; I never told you a word of it, but I told you that Mr. Polk treated me wrong, and if they had treated me right it would not have come to this pass. If you will let me tell the story I will tell you and you can cross-examine.

Q. Tell your story.

A. I had the money to pay it and have it yet to pay that note, and the property was likely to raise in the town. There is $800.00 difference between Mr. Polk's deal and mine. The deed I gave Polk is for $4,800.00 and the deed I got from Mr. Robertson was only $4,000.00, and Mr. Polk promised to pay me from time to time a hundred dollars or so, and he promised to pay if he could sell the property. I expected that he would do that, but he did not. I told him I would sell to him on those conditions, and as I was leaving after awhile he sold some property, and I asked him for the money and he said he didn't have it. He gave me a few dollars now and then. I let him alone for 18 months, and I thought I was
257 likely to not get my money, and I spoke to Mr. Hartigan about it and he said the best thing I could do was to break up the deed and he would help me. Mr. Hartigan left at the same time and went to Hastings and *and* told me that he wrote a letter to Baltimore and received an answer, stating that the thing would be investigated. I saw no investigation and no way to do but to put Polk and Robertson to fighing and in that way get my money. I put them to fighting and I got my money since from Mr. Polk. Most of this he paid me; the last of it last January.

Q. How much has he paid you altogether since this suit was brought?

A. $600.00; if I had taken his note I would have had him bound, but I did not, and I expected he would pay me, and he did not, and I thought I would put them to fighting to get my money.

Q. Didn't you state if we would pay you $500 you would testify in our case?

A. No; because I was sure of them.

Q. Mr. Polk had offered a thousand dollars to testify for him?

A. No, sir.

Q. When you were here the 17th of October, 1888, you said if we

would pay you money you would testify on our side of the case, and if we did not you would not give us the true version of the conversation.

A. No, sir; but I would give the whole business just as it was.

Q. If we paid you $500.00?

A. No; I didn't say $500.00; I said a thousand, I think.

Q. Didn't I tell you that we never paid money for the testimony of witnesses?

A. Mr. Clarke said that he didn't hear me say it; he said if I made the proposition to you you might take it up.

Q. What did I say to you?

A. You did not say anything about it.

258 Q. Didn't I say that we did not pay money to get the testimony of witnesses?

A. No; but you said you would not pay anything to me then; Mr. Clark said that he would pay my way up and down, and he did not do it.

Q. Did you not tell me in that interview that you were going to testify for the side that gave you the most money?

—. ——.

Q. Was this deed from Robertson to you ever in your possession?

A. Yes, sir.

Q. It came direct to you?

A. No; it came to Mr. Polk.

Q. And Mr. Polk refused to give it up, did not he?

A. No, sir.

Q. Did not you tell me on the 17th day of October, in that center room of this office, that the deed came to Mr. Polk and Mr. Polk would not turn it over to you until you had signed the mortgage and note?

A. Yes, sir; I told you this: I told you when the deed came that Mr. Polk gave me the deed, and afterwards, the same day that we fixed up the transaction of the delivery, and I did not tell you about the $600.00.

Q. Why did not the deed go on record before the 22nd day of January?

A. I do not know.

Q. When did you get the deed to Polk?

A. The same day that he gave it to me.

Q. He gave it to you or you gave it back to him?

A. When he signed the deed for $4,800 I gave him both deeds.

Q. Did he sign the deed to you for $4,800.00?

A. Yes; he was to give $4,800.00 for the property.

Q. Did he sign that deed?

A. Yes, sir.

259 Q. And conveyed the property to you?

A. No; but I conveyed it to him.

Q. Why did he sign the deed to you?

A. I said the date that I gave him that deed.

Q. The deed from Robertson?

A. Yes; I gave him the deed from Robertson, and he has the deed I made out for the property.

Q. You were subpœnaed to attend here once before?

A. Yes, sir.

Q. The reason why you did not come up from Plattsmouth was that you were sick?

A. No; not unless you call rheumatism sick.

Q. You were not sick?

A. Not if I was able to use my limbs.

Q. Was it on account of your sickness that you did not come down the time before?

A. No; only I had the rheumatism.

Q. Since that time Mr. Polk has paid you money?

A. Not a cent.

Q. Since the time I had the talk with you up in the office—the time you were subpœnaed—the first time in this case—had Mr. Polk paid you any money?

A. Yes, sir; he gave me a note for $500.

Q. Has that been paid?

A. No; but it will be when it is due.

Q. It is not due?

A. No, sir.

Q. Do you know W. D. Brown, of Plattsmouth?

A. I do.

Q. Do you remember of having a talk with him with reference to this case?

260 A. I really do not know; perhaps I did.

Q. Don't you?

A. I really do not know; if he says so it is true.

Q. Did not you tell him in that conversation that if the Senator did not cough up to you now that you would go back on him and tell just what the transaction was between Robertson and you and Mr. Coke?

Objected to as incompetent, immaterial, and irrelevant and hearsay.

A. I don't know whether I spoke that way or not.

Cross-examined by Mr. COVELL:

Q. You may state whether or not there was any arrangement between you and Mr. Polk or the firm of Chapman & Polk before the making of the deed of Alexander H. Robertson in this case to you for the property involved in this case that the deed of the property was to be a sale in effect to Polk and not to you. State the facts in that regard.

A. There was not a word about it. I never spoke a word about it except to Mr. Polk. Mr. Chapman didn't know a word about it.

Q. State whether or not when the deed was made by Robertson to you you purchased the property in good faith with the intention of paying for it according to the arrangement of the purchasers.

A. Yes; the first time I did.

Q. How much were you to put down in cash?
Q. $1,000.00.
Q. What was to be done with the balance?
A. Paid in thousand-dollar notes, of which I signed three.
Q. Were those to be secured by a mortgage on the premises?
A. Yes, sir.
Q. Were they secured by mortgage on the premises?
A. Yes, sir.

Q. State why it was they did not pay the thousand dollar- to
261 Robertson.

A. The reason was this, that there was so many weeks passed by—I think it was 2 or 3 months—that Mr. Polk was speaking to me about it, and he said that he wished he had the money to buy it, and I said I did not like to see myself run out of money, but perhaps I could not sell the property as readily as I might expect, but after a time I found out that the property was increasing in value, and I said to Mr. Polk, I will take that property.

Q. You sold the property to Mr. Polk, did you?
A. Yes, sir.
Q. Did you and your wife deed it to Mr. Polk?
A. Yes, sir.
Q. How much was Mr. Polk to pay you for the property?
A. The difference in our deeds, $800.00.
Q. He was to pay you $4,800.00?
A. No; he was to pay me $800.00, and he assumed the payments to Robertson.

Q. You may state whether there was any *any* contrivance, arrangement, or conspiracy whatever between you and Mr. Polk individually or between you and Mr. Polk and Mr. Chapman individually or as a firm with respect to the purchase of this property from Alexander H. Robertson or deed thereof by him to you as trustee for the estate by which you were to be used as a cat's-paw or as a stool pigeon for the purpose of taking the title and passing it over to Mr. Polk. State the facts in regard to that, if any.

A. No; there was not, and what is more I never thought up to that time and did not think until Mr. Coke began to go back on me and not pay me the money, as he said he would pay a hundred dollars now and then, as he would sell property, and it was due 12 months afterwards before I thought of raising this stink that
262 I have raised now; it was fully 12 months before I considered anything was wrong.

Q. You had been asked a question, which has been called to my attention, respecting some conversation between you and Mr. Clark as to whether or not the plaintiff or his attorneys in this case would pay you money for your testimony, or any other valuable consideration; you may state what the facts are in that regard; state whether any offer has been made to you by the plaintiffs or his attorneys looking in that direction.

A. I cannot say directly that it was said to me, but the only thing is that Mr. Clark told me when this thing was happening—first, Mr.

Clark told me that he was up here with Mr. Congdon and this other gentleman, and that he found out that Mr. Robertson wanted $3,000 from Mr. Polk in order to settle this business, and Mr. Clark told me that it was not Polk that they should deal with; that he considered that it was the other fellow with me, and he said that he thought that was the proper plan, to deal with me and not with Mr. Polk.

Q. What, if anything, did Mr. Clark say to you as to whether anythin- was to be paid you—either money or other valuable consideration—before you would come here and testify in this case verbally to the plaintiff?

A. He did not tell me anything at all.

Q. What Clark was it that you had the conversation with?

A. Byron Clark, here.

Q. You said something in answer to a question by the other side about having *said* some conversation with Mr. Hartigan with respect to this matter; state the facts that occurred as to that, if anything.

A. I told Mr. Hartigan in substance that Mr. Polk had treated me and that I was to get so much money for that, and he said
263 the best thing I could do with — damned stinker was to break up the deal.

Q. State whether or not Mr. Hartigan was one of the plaintiff's attorney- in this case.

Q. He told me that he wrote to get a power of attorney to act. Whether he got it or not I cannot say. He wrote from Hastings.

Redirect examination by Mr. CLARKSON:

Q. Mr. Hartigan, you say, suggested breaking up the deed?

A. Yes, sir.

Q. How did he think a deed could be broken up?

A. I told him the circumstances of the case.

Q. He thought the deed could be broken up?

A. Yes; I think so.

Q. And that was before you were up here in Omaha?

A. That was before I wrote the letter.

Q. You say Mr. Polk was anxious to buy the property?

A. Yes, sir.

Q. But said to you that he did not have the money?

A. Yes, sir.

Q. And wanted you to buy it because he did not have the money?

A. Yes, sir.

Q. Why did he buy it of you afterwards?

A. I suppose he got the thousand dollars afterwards.

Q. And then he was ready to buy it?

A. Yes, sir.

Q. But he depended upon you for money in the first place?

A. He did not depend upon me for the money, because I did not give it to him.

Recross-examination by Mr. COVELL:

Q. What do you mean by the answer to the question just made, that Mr. Polk did not depend upon you for any money, be-
264 cause you would not give him any?

A. I had dealing with him before, selling other property, and I had a good deal of trouble in getting the money out of him, and I thought I would have more trouble if I gave him a thousand dollars in this business.

FRANK CARRUTH, sworn for the plaintiff, examined in chief by Mr. CLARKSON, testified as follows:

I reside at Plattsmouth and have for 18 years; am in the jewelry business.

Q. Have you dealt in Plattsmouth real estate within the last five years?

A. Yes; I have, some.

Q. Are you familiar with the value of property there?

A. I think I am, somewhat.

Q. Were you familiar with the value of real estate in the fall of 1885 and winter of 1886?

A. Yes, sir; to some extent.

Q. Do you know the property in controversy in this suit?

A. Yes, sir.

Q. It is the east half of lot 10, block 28, the west 20 ft. of lot 12, in block 29, and lots 7 to 12, inclusive, in block 5, White's addition; lots 1 to 6, inclusive, block 8, White's addition; lots 1 to 6, inclusive, block 89, city of Plattsmouth, and lots 1 to 6, inclusive, block 2, city of Plattsmouth. Do you know that the lots in block 8, White's addition, and block 89, city of Plattsmouth, are half lots?

A. Yes; it seems to me that there are 12 or 14 lots to the block. They are cut the other way from what the whole town is.

Q. What was the value in the latter part of December, 1885, of the east half of lot 10, in block 28?

265 Objected to as irrelevant, immaterial, and incompetent.

A. There was very little property changing hands and I suppose that the market price if established by what it will sell for. I think that I was assessor and assessed the 4th-ward property opposite that, and the valuations that were put on the property were something like this: In that block the lots would be about $2,000, in the block below $1,500, and the one below that $1,200.

Defendant objects to the answer and moves to strike out the part of the answer which shows the valuation as incompetent, irrelevant, and immaterial, and specifies another block than that indicated by the question.

Q. The question is, Do you know or did you know the latter part of December, 1885, the market value of the east half of lot 10, block 28?

A. I know about what they asked for lots; I do not know of any that were sold that *much*.

Q. Do you know of the value?

A. Yes; I think so.

Q. What was the value of the east half of lot 10, block 28, in the latter part of December, 1885?

Objected to as irrelevant, immaterial, incompetent, and that the witness has not shown himself to possess such knowledge of the market value of the property as to be able to testify thereto and as incompetent generally.

A. I would say $1,800.

Q. Did or not the value of that property increase from the middle of December, 1885, say up to February, 1886?

Objected to as incompetent, immaterial, and irrelevant.

A. I do not know that it did.

Q. What, if any, difference would there be in the market value of the lot if it were sold for cash or one-fourth down and the balance in three years?

266 Objected to as incompetent, irrelevant, and immaterial.

A. I do not know that there would be any difference.

Q. Did you in December, 1885, and January and February, 1886, know the market value of the west 20 ft. of lot 12, block 29, Plattsmouth?

A. Yes, sir.

Q. What was the value of such property at that time?

Objected to as incompetent, irrelevant, and immaterial, and the witness not having shown any such knowledge of the value of real estate as to be able to testify thereto, and as incompetent generally.

A. I would say $1,500.00.

Q. Did you, in December, 1885, and January, 1886, and February, know the market value of lots one to six, in block two, city of Plattsmouth, known as the surveyor general's property, six lots?

A. Yes, sir.

Q. What was the market value of that property at that time?

Objected to for the same reason as before.

A. I would say $1,800.00.

Q. That is, $300 a lot?

A. No; the whole property—six lots. There is a house on there.

Q. Did you, in December, 1885, or January, 1886, or February, know the value of half lots 1 to 6, in block 8, White's addition?

A. Yes, sir.

Q. What was that value at that time?

Objected to as incompetent, immaterial, and irrelevant, and the witness not having shown himself competent.

A. I would say $2,000. I believe there are two houses there.

Q. You mean simply blocks 8, or include the lots in blocks 8 and 9 also?

A. I don't know which block it is—if it is the property that Mr. Polk occupies as a residence or the Drummond property. I
267 was thinking it was the property Mr. Polk referred to.

Q. The property referred to is the property that joins the half lots—that is, the Drummond property?

A. No; I would say that those six lots would be worth about $500.

Q. The six half lots in White's addition?

A. Yes, sir.

Q. Did you at that time, in December, 1885, and January & February, 1886, know the market value of lots 1 to 6, inclusive, in block 89, city of Plattsmouth—these are half lots immediately south of the property concerning which you have just given your testimony?

A. Yes, sir.

Q. What was the market value at that time?

Objected to as incompetent, immaterial, irrelevant, and the witness not shown himself competent to testify.

A. I think about $2,000. I was speaking of Mr. Polk's property. I had reference to the 6 lots.

Q. The 6 full lits in White's addition and block 89, city of Plattsmouth—if that makes the six lots the ones that join that make the $500.00?

A. I do not know where the city line is, but it is somewhere there.

Q. Did you in December, 1885, and January and February, 1886, know the market value of lots 7 to 12, inclusive, in block 5—that is, the Polk property?

A. Yes, sir.

Q. What at that time was the market value of that property?

Objected to as incompetent, immaterial, and irrelevant, and the witness has not shown himself competent to testify in regard to the value of property.

A. I would say $2,000.00.

Q. During December, 1885, and January and February, 1886, were you dealing in Plattsmouth real estate?

268 A. Yes, to a certain extent.

Q. Were you or not watching it with reference to making purchases?

A. I think I made one purchase. I don't remember distinctly as to the date.

Q. Which year do you mean?

A. I think it was 1886.

Q. What part of 1886?

A. March.

Q. Upon what do you base your opinion as to the value of this property in December and January, 1885–'6?

A. I base it on the valuation that had been set on the property for appraisement purposes and for lots sold.

Cross-examination by Mr. COVELL:

Q. If you had been about to purchase that — has been enumerated to you in the questions that have been asked in a body in December, 1885, or in January, 1886, what would you have been willing to pay therefor, taking into consideration the property and situation at the time collectively?

Objected to as incompetent, irrelevant, and immaterial and calling for the present testimony of the witness as to what he might have been willing to do four years ago.

A. I could not state definitely what I would. I never figured it up together. I do not know whether I would have wanted to of bought or not.

Q. If that property had been offered to you at the time mentioned, in December, 1885, or January or February, 1886, by a trustee for the estate and offered a deed of the property to you as trustee for the estate, you may state what you would have given for the whole of that property at that time. Would you have given more than $4,000 with such a deed as that?

269 Objected to as irrelevant, incompetent, and immaterial and calling for the present testimony of the witness as to what he might have been willing to do four years ago.

A. I do not know as I understand what kind of a deed that is.

Q. If you were going to get a good title for the property?

A. I think I would take it very quick; of course, buying a lawsuit, it might have been different; I am not acquainted with what a trust deed is.

Q. Supposing the plaintiff in this case had been appointed by law or otherwise trustee for an estate of a deceased person, and that plaintiff had offered to sell to you all the property that you have mentioned, giving you simply a deed from himself as trustee for the estate of a deceased person, would you or not have given more than $4,000 for the property with that kind of a deed?

Objected to as incompetent, immaterial, and irrelevant and calling for the present testimony of a witness as to what he might have been willing to do four years ago.

A. I do not know that I would consider it at any price without knowing more about what a trustee can do than I do now. I do not know whether he can make a deed to the property.

Q. Do you know whether any portion of the property enumerated was in a condition to be rented and rented for any valuable rent at the time mentioned, say in December, 1885, or January or February, 1886?

A. I think there were 4 houses on the property, all occupied. I could not say positively. I do not know what the rents are; one on Main street. I do not know whether the surveyor general's is occupied or not, or whether the property Polk occupies was or not, but I think it was.

Q. State whether or not within your knowledge there was any revenue derived from the property upon which there were any buildings or from the parties occupying the same at that time.

270 A. Not to my knowledge.

Q. You may state whether or not if, at the time you have mentioned, in December, 1885, or January or February, 1886, there was any property sold near or in the vicinity of the property concerning which you have indicated that was changing hands or being sold.

A. I think there was some in the neighborhood of Mr. Polk's residence. I believe there were 2 or 3 pieces—2 or 3 transfers—about that time.

Q. Was that vacant or otherwise?

A. No, sir.

Q. It was not vacant property?

A. No, sir.

Q. You may state what are the surroundings of the property which you have called the surveyor general's property and has been for several years with respect to occupancy and so on from your own knowledge.

A. Everything within a quarter of a block, swinging around you can find most every kind.

Q. Say within 2 or 3 blocks.

A. The other half of the block is occupied by Dr. Black, and I think at that time Slego.

Q. State whether or not there is a house of prostitution close by and been occupied by an old woman who carried on that sort of business by the name of Maud and has for several years last past.

A. According to rumor and report I believe there is.

Q. State whether or not if that is the fact that that property would be worth anything for residence for respectable people—that is, the surveyor general's property.

Objected to as calling for a conclusion of the witness, incompetent, irrelevant, and immaterial.

Q. State what would be the value of that property for the
271 residence of respectable people if that be the fact.

Objected to as having nothing to do with the evidence and incompetent and immaterial.

A. There is 1 or 2 as fine citizens as we have in town that lives as close; George Housel built a fine residence as close as that, and Mr. Drummond built on his lot since that time; I think they are all equal distance, but I cannot say whether it would be a good price. I never prospected over the hill.

Q. About how far from the surveyor general's property and in what direction is the property and the property that was bought and sold from the land on which is a house of prostitution?

A. I do not know; I couldn't tell you.

Redirect examination.

By Mr. CLARKSON:

Q. In speaking of the trust deed, if a firm of competent lawyers had declared the title in the trustee to be perfect, would you consider that a deed from him was of any less value than a deed from a private individual?

Objected to as incompetent, irrelevant, and immaterial.

A. No; I do not think I would if they guaranteed it to me.

CALVIN H. PARMALEE, sworn for the plaintiff, examined in chief by Mr. CLARKSON, testified as follows:

I reside in Plattsmouth and have resided there since August, 1857.

Q. What has been your business for the last 5 years?

A. I have had a variety of business; managed some farms and other interests in town and selling real estate in town.

Q. You have dealt in real estate in Plattsmouth during that time?

A. Yes, sir.

Q. Do you know the property in controversy in this suit?

A. Yes, sir.

272 Q. Did you know it in December, 1885, and January and February, 1886?

A. I did.

Q. Were you familiar with the value of real estate in Plattsmouth in December, 1885, and December and January, 1886?

A. I considered myself fairly posted in values.

Q. I am inquiring of the summer of 1885. Did you know the value of property there then?

A. Yes, sir.

Q. How extensive was your dealing in real estate during the latter part of 1885 and early part of 1886?

A. I do not know that I could give dates of purchase and sales, really. I think I bought 7 or 8 houses along about that time—7 or 8 different pieces of property; it might have been the next year; I am not sure.

Q. In connection with your purchases, were you in the habit of apprising yourself of the value of property?

A. As best I could; yes, sir.

Q. Did you know the value of the property in controversy in December, 1885, and December and January, 1886?

A. I think I did, sir; in accordance with prices that were made on other property around it.

Q. What was the value of this property?

Objected to as incompetent, irrelevant, and immaterial.

Q. Take the first or east half of lot 10, block 28, known as the Leonard property.

Objected to as incompetent, irrelevant, and immaterial.

A. I would consider that property cheap enough at 16 to $1,800.
Q. Take the west 20 ft. of lot 12, block 29.

Objected to as incompetent, irrelevant, and immaterial.

A. That was worth nearly the same amount; it was one block farther down the street, but I think I would as soon have it.

273 Q. Take what is known as the surveyor general's property; that, I believe, included 6 lots?

A. Yes, and a house. I think those lots are worth $100.00 apiece.
Q. Take what is known as the Drummond property, block 89, city of Plattsmouth.

Objected to as incompetent, immaterial, and irrelevant.

A. Right in there I would think 100 to $125 a lot.
Q. Take what is known as the Polk property, lot 5, White's addition.

Objected to as immaterial, incompetent, and irrelevant.

A. I don't think that property was worth over $1,500.00 at that time. There were two houses on it, but they were out of repair.
Q. You learned of a deal between Mr. Polk and Robertson, did you, the plaintiff in this case?

Objected to as incompetent, immaterial, irrelevant, and leading.

A. I do not think I did.
Q. Do you know of a purchase being made from the Davis estate of this property?
A. Yes, sir.
Q. Before that purchase was made, did Mr. Polk ever approach you with reference to buying the property?
A. Yes, sir.
Q. What did he say?

Objected to on the part of Chapman & Polk as immaterial, incompetent, and irrelevant.

A. He sent for me to come to his office and told me that he was the agent for the property to sell it. It was known then as the Early estate. We knew it as that, being the property—the lots—

274 you have named over. I think there are 18 lots of them and two half lots on Main street. Those are residence lots where Mr. Polk lives; but where the surveyor general's property is and where Drummond's building stands, what he asked me first was what I would give for it. He sent somebody out on the street and hunted me up, and I thought a minute and said I will give

$3,500, but I said I do not know that I want to make any investment. He then asked me if I would give $4,000 for it and divide the profits with him. He said he would advise the sale of it to this agent, or whoever it was, and Mr. Robertson, if that is the person—he would advise him to sell it at $4,000 if I would take it and divide the profits with him, what I made out of him.

Q. What, if anything, was said by Mr. Polk in this interview as to your furnishing money?

A. That was the idea: I was to furnish $4,000 and he would advise the selling of it, advise this man to sell it at that price.

Q. And you and he were to share the profits?

A. Yes, sir.

Q. What, if anything, did he say about the two lots on Main St., the half of lot 10, block 28, and the west 20 ft. of lot 12, block 29.

Objected to as incompetent, immaterial, and irrelevant.

A. We were speaking about the value of the property or what we could make out of it, or what could be done, and Mr. Polk thought that we ought to be able to make the purchase-money out of the other two half lots on Main street.

Q. What was said about the balance of the property?

Objected to as incompetent, irrelevant, and immaterial.

A. We talked about the value of it some.

Q. What, if anything, was said about making as much out of the balance of the property as you would out of the two lots on Main street?

A. We talked it over, that it ought to sell for as much as the Main-street property.

275 Q. Do I understand or not that the general talk between you and Mr. Polk, before any purchase was made from Mr. Robertson, was to the effect that the property would cost $4,000 and you would make out of it about $4,000 for both of you?

Objected to as incompetent, leading, and putting into the mouth of the witness the answer desired.

Q. The general talk was as I have stated, as nearly word for word as I can remember, that he would advise the sale of it at $4,000 provided I would divide the profits with him.

Q. At the time of this talk that you had with Mr. Polk in his office, was any one else present?

A. When I first went into the office, there was.

Q. Who was it?

A. I do not know; it was somebody that came out after me on the street, and I went up with that somebody and went into the office. It seems to me it was Mr. Root, but I am not sure. Anyway, the person went out and Mr. Polk got up and shut the door. There is two rooms for the office.

Q. And then you and Mr. Polk were closeted together?

A. Yes, sir; Mr. Chapman was there when I first went in.

Q. Was he present at any of the conversations?

A. I do not think he left the room until we had talked about the matters.

Q. After this first talk, did you have any subsequent talk with Mr. Polk or Mr. Chapman or both of them together?

A. We talked about it twice.

Q. It is after the first time.

A. No; once after that.

Q. You may state what the second conversation was; where, and who was present.

A. It was in that same office, and in substance the same as the first conversation.

276 Q. Who was present?

A. Mr. Polk and myself. I don't think anybody else was present.

Q. Can you state the time at which these conversations occurred?

A. I could not.

Q. Was it in the winter or fall?

A. It was a short time before the property was sold to O'Donohoe.

Q. Do you know of Mr. Robertson visiting Plattsmouth?

A. I do not, only by Mr. Polk telling me that he was to be there and he would advise that; that is all I know about Robertson. I never saw him and don't know anything about him.

Cross-examination by Mr. COVELL:

Q. Where did you say these conversations occurred between you and Mr. Polk?

A. In Mr. Polk's office.

Q. Which room in the office?

A. In the south room.

Q. Who was in that room at the time you say this conversation occurred?

A. Then it was that the party came and asked me—said they wanted to see me up in the office, and I went in with him, but I do not know whether it was Mr. Root, and I do not know but it was.

Q. Do you remember of any person whomsoever whose name you can give being in the room where you say this conversation occurred at the time you say it did between you and Mr. Polk?

A. Mr. Chapman was in there when I first went in.

Q. How long did Mr. Chapman remain there at that time?

A. I could not say, but he went out before we got to talking the matter over, and went into the next office.

Q. You may state if it is not a fact that Alexander H. Robertson, the plaintiff in this action, came to you in the city of Plattsmouth, at or about the time you have named, and asked what you

277 would give for that property, and is not it a fact that you answered him that you would give $3,500 to $4,000 for all the property that has been mentioned.

A. That is a fact. I had forgotten ever seeing Mr. Robertson. I think that is right; that refreshes my memory.

Q. State the conversation between you and Mr. Robertson at that time, with whoever it was.

A. I think it was Mr. Polk. I am not sure. Somebody brought him to me and introduced him to me—I do not know who it was—and wanted to know what I would give for it.

Q. What was your answer?

A. I do not know that I could say just what that was. He just wanted to know more of me what it was worth.

Q. Give the conversation as near as you can.

A. As nearly as I recollect, it was worth from $3,500 to $4,000.

Q. How long did you and he talk with respect to the property?

A. Not but a minute or two. I don't know that there was anything said more than that.

Q. Did Mr. Robertson see you at any other time in regard to it?

A. Not that I recollect of. I think not.

Q. This conversation was just prior to the time of the sale to O'Donohoe?

A. It was between the time that Mr. Polk and I had the talk and the sale. I do not know how long it was before.

W. L. BROWN, sworn for the plaintiff, examined in chief by Mr. CLARKSON, testified as follows:

I reside at Plattsmouth, Nebraska; with the exception of two years I was in the employment of the Lombard Investment Company, I have been a resident of Plattsmouth since 1878.

Q. What was your business in 1878?

278 A. I was awhile fireman on the B. & M. road and awhile in the round-house, and after a time went into a law office and finished up a reading I had started before I came West. I came out here and have been here since about 1879 or 1880 in the practice of law.

Q. Have you had any dealings in Plattsmouth real estate?

A. As a purchaser of some property and seller of my own, finding customers for some others. I have what is known as real-estate office; strictly speaking I have not been conducting one.

Q. Have you been more or less in the loaning business?

A. I have nearly all the time.

Q. And in that business have you been familiar with the values of real estate in Plattsmouth?

A. As well as I could make myself so as to guard the interests of my clients I have.

Q. In December, 1885, and January and February, 1886, did you know the market value of the property in controversy?

A. February 8th, 1885, I entered the employ of the Lombard Investment Co. as examiner of *of* their titles. I was also expected to keep myself posted as to the value of realty upon which loans would be placed in Cass county. I occupied that position until November, 1887, during which time we made several loans on farms and on city property, the values of which I was expected to look after.

Q. By such property do you mean property in the city of Plattsmouth?

A. Yes, sir; it was on account of my formerly residing there that I was left with that.

Q. Were you or not familiar with the property in controversy in December, 1885, and January and February, 1886?

A. Generally speaking, I was; on all of them I made myself especially familiar, notably with property on which V. V.
279 Leonard purchased, on which we made the loans.

Q. Was that the east half of lot 10, block 28?

A. It was.

Q. At the times last mentioned what was the market value of the east half of lot 10, block 28?

Objected to as incompetent, irrelevant, immaterial.

A. We considered the east half of lot 10, block 28, were worth $2.000.

Q. Was that or not a fair market value for that lot at that time?

Objected to as incompetent, irrelevant, and immaterial.

A. We so considered it.

The WITNESS: Although we notices that it had been sold by Polk to Leonard for a less sum than that, on city property it was a rule with the Lombard Investment Company, in making their loans, to make no loans of a greater amount than the fair value of the land without the improvements. Soon after the date you speak of this loan was made.

Q. What was the amount of that loan?

Objected to as incompetent, irrelevant, and immaterial.

A. $2,000.

Q. At the time the loan was made was this east half of lot 10 improved?

Objected to as immaterial.

A. The loan was made in July, 1886. It was then improved. The buildings were at least half inclosed, but, I think, not finished.

Objected to and ask- that the answer be stricken from the records as incompetent, and fixes a date after the time to which the question is directed and when the deed was made from the plaintiff in the case to O'Donahoe and after the time that O'Donahoe had deeded the property to Polk.

Q. What was the value, in December, 1885, and January and February, 1886, of the west 20 ft. of lot 12, block 29?

280 Objected to as incompetent, irrelevant, and immaterial.

A. That was worth with the improvements on it $1,600.00. I would have given that for it.

Q. What was its fair market value?

Objected to as incompetent, irrelevant, and immaterial.

A. I would say $1,500 or $1,600.

Q. In December, 1885, and January and February, 1886, what was the fair market value of the property known as the surveyor general's property?

Objected to as incompetent and fixing a time after the date to which the question is directed and when the deed was made to the plaintiff in the case of O'Donahoe and after the time that O'Donahoe had deeded the property to Polk, immaterial, and irrelevant.

A. The ground without the building I would say was worth from 10 to $1,200.00, and the building five to $600.00.

Q. That property is lots 1 to 6, inclusive, block 2, city of Plattsmouth, is not it?

A. The north half of block two.

Q. At the times last mentioned what was the fair market value of the property known as the back half of lots 1 to 6, inclusive, block 8, White's addition, and lots 1 to 6, inclusive, block 89, Plattsmouth?

Objected to as incompetent, irrelevant, and immaterial.

A. The north half of fractional block 89, Plattsmouth City, and fractional block 8, in White's addition to Plattsmouth City, those six were worth $700.00. I do not mean simply what Drummond purchased, but the whole 12 half lots, the north fractional half of block 89, in Plattsmouth City, and all of fractional block 8, in White's addition to Plattsmouth City.

Q. In December, 1885, and January and February, 1886, what was the fair market value of lots 7 to 12, inclusive, in block
281 5, White's addition to the city of Plattsmouth?

Objected to as incompetent, irrelevant, and immaterial.

A. Lot 7 had a couple of houses on; at least $1,300.00.

Q. Did you learn of a purchase of this property from Alexander H. Robertson, trustee?

Objected to as immaterial, irrelevant, and incompetent.

A. Not at the time it was named; I learned of it afterwards. I would hear it spoken of.

Q. After you learned of this purchase did you have any conversation with Michael O'Donahoe, the defendant in this case?

Objected to as irrelevant, immaterial, and incompetent on behalf of Chapman & Polk.

A. No, not for a long time afterwards, not for long after, probably a year and a half or two years after.

Q. Where did that conversation take place?

A. The conversation we had was in front of McCord's grocery, in Plattsmouth; somewheres in there.

Q. Was that conversation with reference to the purchase of this property from the trustee?

Objected to as irrelevant, incompetent, and immaterial and leading on behalf of Chapman & Polk.

A. It was not so much as it was in relation to this suit.

Q. You may state the substance of that conversation.

Objected to as incompetent, irrelevant, and immaterial on behalf of Chapman & Polk, and seeking by the answer to impeach the plaintiff's own witness upon the stand.

A. The substance of the conversation was that O'Donahoe had been a party to the transaction and had not been treated fairly by Mr. Polk; that there was an amount due from him, and that this suit was more on account of Mr. Polk not acting fairly; that was the substance of it.

Q. What, if anything, did Mr. O'Donahoe say as to the
282 purchase by him and the deed from him to Polk being a fraud?

Objected to as incompetent, irrelevant, immaterial, and calling for the opinion of the witness.

A. He did not use that expression.

Q. What expression did he use?

Objected to as incompetent, immaterial, and irrelevant on behalf of Chapman & Polk.

A. I understood from the conversation that Polk was the real purchaser and not himself—that is to say, that the deed was made in his name and he conveyed to Polk, but the intention from the start was that Polk was the man that was doing the business; that Polk was the party in interest.

Objected to and move to strike the answer from the records as incompetent, irrelevant, and immaterial, and that it is not shown that this conversation took place in the presence of Chapman or Polk and incompetent generally.

The WITNESS: It did not take place in the presence of Chapman or Polk.

Q. What, if anything, did O'Donahoe say as to Polk's promise to pay him money to act as a go-between — Robertson and Polk?

Objected to as hearsay, incompetent, irrelevant, and immaterial.

A. He said he was to be paid for his services in the matter, but did not state how much; that he had not been paid.

Objected to and move to strike out as hearsay, incompetent, irrelevant, and immaterial.

Q. What, if anything, did Mr. O'Donahoe say as to making the Senator cough up?

Objected to as incompetent, irrelevant, immaterial, and hearsay.

A. He thought he had him now where he could, or substantially that—before this suit was over he would——

Move to strike the answer from the records as incompetent, immaterial, irrelevant, and hearsay.

283 Cross-examined by Mr. COVELL:

Q. In December, 1885, and January, 1886, do you know of any property in the vicinity of the property in controversy selling or changing hands?

A. Not far from that time 44 ft., a full lot instead of a half lot, across the street from the east half of lot 10, block 28, sold for $3,500.00 cash. I wanted to get one-half of it and he said that he gave $200.00 for it; that was a little before that time, I think, but not much before.

Q. Do you know of any property in the vicinity of the surveyor general's property or of the Leonard property or of the property where Milton B. Polk resides changing hands in December, 1885, or January and February, 1886, near the surveyor general's property, in block 2, not very far from that time?

A. It was prior to that time, but not many months. I took an offer to Mr. Dovey, who owned a lot across the street east, $200.00 for the lot, but it was refused.

Q. Answer the question. (Question read.)

A. I do not call to mind any that changed hands up where Mr. Polk lived except some improved property. I think Dr. Saulsberry bought in there about that time.

Q. You passed your judgment upon the values of property as you have given them upon what you think they were worth rather than cash transactions in the market or sales on the market that near the half lot in block 28?

A. The half lot in block 28 is based upon actual cash sales and offer; that near the surveyor general's office is based upon an offer made by myself on behalf of a client of mine prior to and not far from the time mentioned. I know of no property changing hands.

Q. The offer that you say was made by yourself you say
284 was made to Dovey, was not it?

A. At the time he was making the purchase I made the abstract, and at the time the abstract was delivered I asked for one-half of the lot. I was then wanting a front on Main street. He had paid $1,750 for each half of the lot cash. I had talked with the manager of the Lombard Investment Company and made arrangements for money so that I could pay him $1,750, and I offered him my note of $250.00, or I would borrow less from the Lombards and mortgage my half of the lot for enough to make up the difference. The note was to be due in six months, but he did not want to sell.

Q. Is not it a fact that Mr. Dovey never sells any property that he purchases?

A. I never knew him to sell any, but I thought I could get a piece of that property, but discovered that I was mistaken.

Q. Fix the time, if you can, when you say this sale was made to Mr. Dovey.

A. I cannot do that.
Q. As near as you can get at it.
A. I will say within a year of December, 1886.
Q. Prior or subsequent?
A. Prior, I am pretty sure, but I do not remember the exact date.

Redirect examination.

By Mr. CLARKSON:

Q. This offer that was made for property opposite the surveyor general's property, was that accepted or refused?
A. It was refused.
Q. To whom was the offer made?
A. That was made to one of the Dovey boys; it is my impression that it was Rache, but it might have been George.
285 Q. How much was it?
A. $200.00 for one lot.
Q. The same size as the surveyor general's property?
A. Yes, sir; the same size and the same lay of the ground. It lies right east of the surveyor general' property.

By agreement of counsel, the taking of testimony is adjourned until July 3rd, at the city of Plattsmounth, Cass county, Nebraska, at the office of W. L. Brown.

Part second.

286 BYRON CLARK, a witness of lawful age, being first duly examined, cautioned, and solemnly sworn, deposes and says as follows:

Examined by Mr. CLARKSON:

It is agreed by the parties to said cause that the depositions shall be taken in short-hand by H. M. Waring, and by him reduced to typewriting, and certified by him the same as if he were an examiner of this court. It is further agreed that Wm. L. Brown shall administer the oath to the witnesses, he being a notary public in and for Cass county, Nebraska.

1 Q. State your name and occupation?
A. My name is Byron Clark, and I am an attorney-at-law.
2 Q. How long have you lived in Plattsmouth?
A. Ever since 1879, except the year 1881.
3 Q. Are you familiar with the property in controversy in this action?
A. Yes, sir.
4 Q. Do you know of a conveyance of it from Alexander H. Robertson to M. O'Donahoe, and from M. Donahoe to Milton D. Polk?
A. Yes, sir; I know there is one on record, and I have seen the record, and I have talked with the different parties about it.
5 Q. State whether you ever had a conversation with M. O'Dona-

hoe with reference to the conveyance of this property from Alexander H. Robertson, trustee, to M. Donahoe, and from M. Donahoe to to Milton D. Polk.

Objected to as hearsay on behalf of Chapman and Polk and the defendants except O'Donahoe, and incompetent, irrelevant, and immaterial.

A. Yes, sir; I have had two different conversations, I believe.

6 Q. What was the first one?

Objected to as hearsay on behalf of defendants Polk and
287 Chapman and all the defendants except M. O'Donahoe, and as incompetent, irrelevant, and immaterial.

A. The first one was some time—when was this case commenced? Give the date of that filing. I can put it this way: The first one was a short time after this case was commenced in the district court, here in the city of Plattsmouth. My present impression is that it took place on Main street, but it may have been in his office. I am not certain as to that.

7 Q. State what was the subject of that conversation.

Objected on behalf of the defendants Chapman and Polk and all the defendants except O'Donahoe as hearsay; also as incompetent, irrelevant, and immaterial.

A. That conversation was in answer to my inquiries as to how, upon what terms, and what his interests were in the land in controversy; and he then told me he had written to the executor and told him the facts, and that he never had any interest in the land, and that the way in which the deed came to be made to him was that Mr. Polk was acting as the agent. I think Chapman and Polk, was his remark, were acting as the agents for this land for the estate, and that Polk wished to purchase it without the executors knowing of it, and he agreed to give him—if my memory serves me right he was to give one hundred dollars to him and he was to give another one hundred dollars to his wife to have the deed made to him and for them to reconvey to Polk; that he was to act as the ostensible purchaser, and that the executor would sell on the advice of Polk and Chapman. I would not be certain as to that remark, but I know it was either one or both, and that Polk had paid him a payment of $80.00, I believe, and that was all he was able to get out of him, and he had made a present to some of his family in the last holidays of a kerchief, and that for that reason he had made a statement of it as to what the facts were. He told me at the same time that
Polk at all times was really the purchaser of the land,
288 and he should have no interest in the same. That was the substance of that conversation. Afterwards I was with Mr. O'Donahoe in the office of Congdon, Clarkson & Hunt in Omaha, Nebraska—the date I do not now remember, but it probably was in the fall some time or some time in the winter—and I had another conversation with him and with Mr. Clarkson, in which he again made the same statement to which I have above referred, and after

he had made the statement he turned to us and said, "Now, I would like to know how much there is in this for me?" and Mr. Clarkson asked him what he meant, and he said he wanted one thousand dollars for his testimony, for he could get that much from Mr. Polk not to give it away—not to testify to the facts. Mr. Clarkson informed him that we were not purchasing testimony in that way. I think that's the substance of all the conversations I had with him.

The defendants Chapman and Polk move to strike out the answer from the record as being hearsay and as incompetent, irrelevant, and immaterial.

8 Q. Do you know what Mr. O'Donahoe's position was at the time of this transfer from Mr. Robertson—what connection, if any, he had with Chapman and Polk?

A. Well, nothing only what he told me in my first conversation.

9 Q. With him?

Defendants object as calling for hearsay testimony, incompetent, irrelevant, and immaterial.

A. He told me that he was staying in their office. I think his exact remarks were that he was in their office all the time and knew about how Mr. Polk managed the transaction. That is all I know about his connection with that office.

Defendants move to strike out the above answer as hearsay, incompetent, irrelevant, and immaterial.

10 Q. Do you know personally of his officing with Chapman and Polk?

A. Yes, sir; I know that personally. I know he was in
289 there for some time, and I think it was at this particular time, but I would not be positive.

The signature of this witness is waived by the parties.

WILLIAM S. WISE, a witness of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and sayeth as follows:

11 Q. You are a resident of Plattsmouth?

A. Yes, sir.

12 Q. How long have you been a resident of Plattsmouth?

A. I have been a resident of Plattsmouth for about 18 years last March.

13 Q. Do you know the property in controversy in this suit—the 20 feet off of the west side of lot 12, block 29; the east half of lot 10, block 28; lots one to six, inclusive, in block two; lots one to six, inclusive, in block 89, in the city of Plattsmouth, and lots seven to twelve, inclusive, in block 5, and lots one to six, inclusive, in block eight, White's addition to the city of Plattsmouth?

A. Yes, sir; I am acquainted with it.

14 Q. What has been your business for the last five years?

A. The law and real-estate business.

15 Q. Were you familiar with the market values of the property above described in the winter of 1885—December, 1885, to January, 1886?

A. Yes, sir.

16 Q. During that time what was the market value of the west twenty feet of lot 12, block 29, of the city of Plattsmouth?

Objected to as incompetent, irrelevant, and immaterial.

A. Well, that might be pretty hard to say. There was some improvements on them; there was a building on it, and I do not know that I ever examined it to give the value of the building.

17 Q. What was the value of the lot, without reference to the improvements?

Objected to as incompetent, irrelevant, and immaterial.

290 A. The west 20 feet of lot 12, block 29—well, without the improvements it was worth about $1,400.00; $1,300.00 to $1,400.00

18 Q. What was the value at that time of lot 10, block 28?

Objected to as incompetent, irrelevant, and immaterial.

A. About $3,500.00.

19 Q. What was the value of the east half of that lot?

Objected to as incompetent, irrelevant, and immaterial.

A. It was worth about $1,750.00.

20 Q. What was the market value of lots one to six, inclusive, in block two?

Objected to as incompetent, irrelevant, and immaterial.

A. That has a building on it and it is hard to say whether the building is worth anything. That building has been as long as I can recollect, since the surveyor general's office was in it, has been uninhabited.

21 Q. What was the value of the lots without the improvements?

A. I do not know what the improvements were worth. The lots were worth about $1,000.00 at that time, or probably $1,200.00; that is saying nothing about the improvements. I would not like to say anything about them. I would be like some other men I have seen. If I was going to buy it I would probably as lief have it without the building.

22 Q. What was the value at that time (I mean in all these questions the market value) of lots one to six, inclusive, in block 89, and lots one to six, inclusive, in block 8, in White's addition?

Objected to as incompetent, irrelevant, and immaterial.

A. Block 89 of the city?

23 Q. Yes, sir.

A. At that time those lots were worth about $900.00, all of them altogether.

24 Q. At that time what was the market value of lots seven to twelve, inclusive, block five, White's addition?

291 Objected to as incompetent, irreleva-t, and immaterial.

A. Lot seven is the west one?

25 Q. Yes, sir.

A. Those have buildings on them, and I am in the same predicament with them as I was with the others. I would not put a valuation on the buildings because they were in bad condition, and I do not know how bad condition they were in.

26 Q. What was the value of the lots, apart from the improvements?

Objected to as incompetent, irrelevant, and immaterial.

A. Those lots without the improvements were worth at that time about $600.00 to $650.00. There was three of them was pretty good to cut them in two, and there was three of them are very poor. For the improvements you will have to get somebody that examined them at that time. I know the buildings were in pretty bad shape.

27 Q. Do you know for what the buildings rented on the different pieces of property?

A. No, sir; my recollection is now that for a good portion of the time the surveyor general's office has been vacant. I know at one time there was a couple of tenants in there, and I think it would have been better for the property if it had been vacant. I do not know what they were paying, but I presume they promised more than they were paying.

Cross-examination by G. W. COVELL:

28 Q. You may state whether or not you know of the east hal- of lot 10, block 28, having been sold about the 26th of March, 1886, at the suit of the executor of the estate of L. V. Davis, deceased, for $1,075.00?

A. No, sir; I do not.

29 Q. Did you ever hear of it before?

A. Why, I do not think I ever heard of it before. I think that property was foreclosed against Sharba.

30 Q. About that time, say from December 12th, 1855, to
292 January 22, 1886, do you know whether or not that property was in litigation?

A. I do not know. I do not remember the dates about that. I know there was a foreclosure of a mortgage on those lots you speak of, but I understood it was the representative of L. V. Davis against Shaba that foreclosed it.

31 Q. Do you remember of ever having met the plaintiff in this case, Alexander H. Robertson?

A. I do not remember it. My attention was called to it once or twice, and I tried very hard to recollect whether I met him. It is possible I have met him.

32 Q. Do you remember of any person, about September or October, 1885, coming to see you and inquiring of you the value of the property belonging to the estate of L. V. Davis, deceased?

A. No, sir; I do not. That matter has been brought to my attention a couple of times, and I cannot remember anything of it. I tried very hard to recollect it, but I cannot do so.

33 Q. At the times mentioned by you on your direct examination as to the values of the property in controversy had you made any examination of the property so you could state what those values were, as a matter of fact, at the times?

A. No, sir. That is one reason I refused to give a valuation on the improvements, and I just gave it on what the market values were then. I made no special examination of it to know its condition at the time.

34 Q. Do you know of any sales of real estate having been made in the vicinity of the Main-street property between December 12, 1885, and January 22, 1886; and, if so, were you acquainted with the prices?

A. I could not say whether there was any. I could not say there was or there was not between those dates. In fact, I do not know that I could give the date of any particular sale that was made on the street at any time.

293 35 Q. Do you know of any sales being made of any property adjoining the surveyor general's property, which is in block two, in the city of Plattsmouth, or in the vicinity of block 8, in White's addition, or in the vicinity of block 5, in White's addition, or in the vicinity of block 89 of the city of Plattsmouth; and, if so, what were the prices that such lots were sold for?

A. Adjoining block two on the west, across the street on the west, a young man named Houseworth bought lots, and it is my recollection *is* he paid $500. That is what he stated to me. I do not know of any sales of my personal knowledge, but I know of my own personal knowledge that Fitzgerald was asking that for them.

36 Q. In fixing the values of real estate as you have fixed them you depend upon your judgment entirely, without any reference to sales of real estate?

A. No, sir: I know of sales that were made during those years. This sale on the corner to Beck was in 1885.

37 Q. But I am fixing the time between December 12th and January 22nd, 1886.

A. As I said, I could not name a sale that was made between those dates. I do not know that there was one or that there was not one.

38 Q. Is it not a fact that there was no preperty selling at that time; that the sale of property was very dull?

A. I could not say about that.

39 Q. But, as between those two dates, you depend upon your judgment as to what property ought to have brought, instead of actual sales?

A. It is not based upon actual sales that were made between those dates, but on sales that were made about that time.

294 Redirect examination by Mr. CLARKSON:

40 Q. Do you recollect the purchase of Mr. Dovey on Main street?

A. Yes, sir; I remember the time he purchased on the street.

41 Q. Do you know about what time that was?

A. Well, no; I am not positive about it, but I think it was in the spring of 1886.

42 Q. Do you know what he paid?

Objected to as incompetent, irrelevant, and immaterial.

A. My judgment is and it was reported at that time, it seems to me, that it was $4,000.00 for the whole block. I would not like to be positive about it.

43 Q. You spoke of Mr. Fitzgerald's price being $500.00 for some lots. Was that——

Objected to as incompetent.

A. He had two lots west and across the street from these lots in block two. I do not remember when Houseworth bought them, but it occurs to me it was along about that time. I did not sell them, however. I had them on my list, and Fitzgerald's price was $500.00.

44 Q. Were they sold to Mr. Houseworth through you?

A. No, sir.

45 Q. How long after the time you had then on your list were they sold?

A. It was a long time after they were given to me to sell. I had Mr. Fitzgerald's property listed for a long time.

46 Q. When did you first take the property for sale?

A. I do not know the date just exactly, but I think I had those two lots for sale for Mr. Fitzgerald eight years ago first. It is not less than eight years ago. He gave me that price then and it remained the same and his prices were what I considered exorbitant.

47 Q. How do those lots front?

A. They front north and east.

48 Q. The same as the lots in block two?

295 A. The lots you mention are in the north part of the block. Yes, sir; the lots face north and had an east frontage. I would like to say this, that the two lots of Mr. Houseworth would average a little better than those you mentioned. I do that in justice to all parties, for the block you mentioned has a ravine that backs up into it a little, while the lots that Mr. Houseworth has are just about perfect.

49 Q. Do you know upon what basis property in Plattsmouth was assessed for taxation in 1885 and 1886?

Objected to as immaterial.

A. I do not believe I would like to state. It would be impossible for a man to say anything about it, because they say — are going to assess a third of the value and at one-half and so on. My recollection is now thay made the assessment at one-third the value. That is my recollection, but I would not be positive.

Defendants move to strike out the above answer as not responsive and as the voluntary statement of the witness, without any foundation being laid for its introduction, incompetent, irrelevant, and immaterial.

The signature of this witness was waived by the parties.

WILLIAM C. SHOWALTER, a witness of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and sayeth as follows:

Examined by Mr. CLARKSON:

50 Q. What position do you occupy in the county of Cass, Nebraska?

A. I am clerk of the district court.

51 Q. How long have you been such clerk?

A. Nine years.

52 Q. You were clerk, then, in December, 1885, and January and February, 1886?

296 A. Yes, sir.

53 Q. Do you know of a matter in your court along the latter part December, 1885, or the fore part of 1886 entitled "In the matter of the application of Alexander H. Robertson for license," and an order of the court to carry out the provisions of the last will of L. V. Davis, deceased?

A. Yes, sir; there was a case on the docket.

54 Q. Do you know what time the petition in that case was filed?

A. It was the 4th day of February, 1886. I say so on this certificate, and undoubtedly it is a fact, because I certified it from the record.

55 Q. Do you know what action was taken on that case further than the filing of the petition?

A. There was no further action taken; it was dismissed without any further action.

56 Q. Do you know at what time?

A. The 20th day of April, 1886.

57 Q. Are the files in that application in your possession?

A. No, sir; the petition is withdrawn.

58 Q. What became of that?

A. My recollection is the petition was taken by Mr. Polk.

59 Q. Since that time has the petition or anything in connection with the case been in your possession?

A. No, sir; it has not.

Cross-examination.

By Mr. COVELL:

60 Q. Was the petition in that action withdrawn by leave of court?

A. No, sir.

61 Q. Was it dismissed by order of the court?

A. No, sir; it was dismissed at the instigation of Mr. Polk.

62 Q. You dismissed it, did you?
A. Mr. Polk ordered me to dismiss it and withdrew the petition.
297 63 Q. Was that done during a term of court or not?
A. No, sir.
64 Q. Who was attending to that matter, Chapman or Polk?
A. I think it was the firm of Chapman and Polk.

(Excused.)

The signature of this witness was waived by the parties.

PERRY WALKER, a witness of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and sayeth as follows:

Examined by Mr. CLARKSON:

65 Q. Are you a resident of Cass county, Nebraska?
A. Yes, sir.
66 Q. You do not live in the city of Plattsmouth, do you?
A. I am not living here now, but I lived here last winter.
67 Q. How long had you lived in Plattsmouth up till last winter?
A. I have lived in Plattsmouth regularly; nothing more than through the winter at any time.
68 Q. You have a farm home a short distance from the city?
A. Yes, sir.
69 Q. Do you know M. O'Donahoe, the defendant in this suit?
A. Yes, sir.
70 Q. Do you know Milton D. Polk, one of the defendants?
A. Yes, sir.
71 Q. Do you remember the alleged sale of the property by Alexander H. Robertson, trustee, to Michael O'Donahoe and from O'Donahoe to Milton D. Polk?
A. I did not know anything about the sale to O'Donahoe, and I did not know anything about the sale from O'Donahoe to Polk. I supposed Polk bought the tract directly from the parties in the East. That was my supposition.
298 72 Q. How did you come to have that supposition?

Objected to as incompetent, irrelevant, and immaterial.

A. Mr. Polk spoke to me one day and said the property was for sale, and he wanted to know if I would not go and look at it and see what it was worth, and I told him I would, and I went down and came back and told him what I thought it was worth, what I would be willing to pay for it, and he said that the price was agreed upon, and that Palmer wanted half of it, and after that he told me he had bought it himself. That is the way I happened to know about it.
73 Q. What, if anything, did he say to you about Palmer buying it with Polk?
A. Why, he did not say Palmer had bought it, but he said that

Palmer wanted it; he wanted an interest in it or something of that kind.

74 Q. What, if anything, did he say about throwing Palmer overboard and taking you in?

A. I do not know as he expressed it exactly that way, but he said Palmer wanted it, but he would let Palmer out and give me a chance.

75 Q. Was that before or after you heard Polk had purchased it?

A. It was before.

— Q. How long before?

A. I do not know. Probably six weeks. It might have been more and it might have been less. I cannot exactly tell, for after the transaction fell through I did not charge my memory with it at all.

76 Q. Why did the transaction fall through with you?

A. Polk said he bought the whole of it and he wanted the whole of it; so that let me out.

77 Q. Had he agreed to divide with you?

A. Yes, sir.

78 Q. And afterwards told you he had taken the whole of it?

A. He afterwards told me he had taken the whole of it; yes, sir.

79 Q. Did he go into the particulars with you between he and Palmer?

299 A. No, sir; he did not.

80 Q. What was the price fixed upon between you and Polk as to what you could buy it for?

A. $4,800.00.

81 Q. About what did you and Mr. Polk conclude would be the profit in buying that land for $4,800.00?

A. I do not know what the profit would be. I do not know as he said. We thought there would be a profit in it when it was sold out. I thought it would be profitable at that time, but property at that time was not very ready sale, but I thought this would sell.

82 Q. And you were to have half of the profit and he a half.

A. Yes, sir.

83 Q. Who was to furnish the money?

A. I was to furnish my half and he was to furnish his half.

84 Q. Afterwards did you go to him and renew the proposition?

A. I was in the office there and I asked him about the matter; how it was, how he completed the bargain, and he said he had taken it all himself.

85 Q. And that is all he said?

A. Yes, sir.

86 Q. Do you know what time that was?

A. No, sir; I could not tell, but it was along in the winter some time; it was cold weather, at any rate.

87 Q. What, if anything, did he say about O'Donahoe?

A. Not anything. I did not know that O'Donahoe had anything to do with it at that time.

88 Q. In this conversation with Mr. Polk did he say anything

about the value of the Main-street property—that it would pay for the whole thing and the rest would be profit?

Objected to as leading and incompetent.

A. No, sir; I do not remember of his ever saying that.

300 89 Q. Did he talk particularly about the Main-street property?

A. Yes, sir; that was spoken of. There was that lot where Slater's building is. He said that was low and could not be sold at the present, and that there was one lot that could be sold. That is all he said. That is the way I have it in my mind.

90 Q. What, if anything, was said about the one lot having been sold to Leonard or could be sold to Leonard?

A. Not anything to me.

Cross-examination.

By Mr. COVELL:

91 Q. When did you say this conversation took place between you and Mr. Polk?

A. Well, it was some time along in the winter.

92 Q. Of what year?

A. I'll be blamed if I could tell now. It was the year he claimed to have bought the property. I could not fix the date.

93 Q. Was it in the winter of 1886?

A. I think it was, but I am not sure. I could not fix the date.

94 Q. Was it two years ago last spring or three years ago last spring?

A. That I could not tell you. It is something that did not interest me. After I get through trading I do not try to fix dates. I did not think anything more of it till this summer, when I heard that Polk was having trouble.

95 Q. You may state if you looked at the property at the time you mentioned of having this conversation with Mr. Polk or about that time.

A. Yes, sir.

96 Q. Did you look at all the property?

A. Well, we looked at that time at the surveyor general's house and then two houses on the hill, and there were some more lots somewhere, and I understood him they were down under the

301 hill and did not amount to much.

97 Q. What was the value of the surveyor general's property at that time, if you know the value? What did you fix upon as the value, if you know?

Objected to as improper cross-examination, and that no foundation has been laid for this class of testimony.

A. I cannot tell you now. I know what I had in my mind at that time as to what they would sell for, but I cannot tell it now, but I know I fixed the price so that I thought there would be a little profit.

98 Q. Do you know the value of the surveyor general's property at that time?

A. I know what I would have been willing to give for it.

99 Q. What would you have been willing to give for that at that time?

A. Somewhere about $800.00.

100 Q. What is the other property you mentioned as having examined—lots one to six, inclusive, in block 89, of Plattsmouth, and lots seven to twelve, inclusive, in block five, White's addition—worth at that time?

A. With the two houses up on the hill?

101 Q. Yes, sir.

A. I calculated at that time they were worth $600.00 apiece.

102 Q. Those two lots with the house?

A. Yes, sir; the two lots; two or three. There is six lots, and I thought they were worth $600.00 apiece.

103 Q. You put that property there at $1,200.00?

A. Yes, sir.

104 Q. And the surveyor general's property at $800.00?

A. Yes, sir.

105 Q. And the two pieces of property on Main street, the east half of lot ten, block 28, and the west twenty feet of lot 12,
302 block 29, what was the value of those two pieces of property at that time?

A. I considered them worth about $1,800.00. That is the way I kind of figured it in my mind at the time I looked it over. I looked it over just to see what I thought I could make out of it.

106 Q. You do not remember what time nor what year this was?

A. I know there was no snow on the ground. If there was any it was very little, for we went up there with a buggy.

107 Q. Would you have paid in cash at that time the prices you have put upon this property?

A. We would not be required to put in cash.

108 Q. Would you have paid in cash the prices you have fixed upon as the values of this property for that property?

A. Yes, sir; I believe I would if I had the cash, and I would if I had to borrow it. I think it was worth it.

The signature of this witness is waived by the parties.

Hereupon the further taking of testimony in this matter was adjourned until two o'clock p. m. of Friday, July 5th, 1889, at Congdon, Clarkson & Hunt's office, in Omaha, Nebraska.

FRIDAY, *July 5th*, 1889—two o'clock p. m.

The parties appeared and by consent of counsel the further taking of testimony in this cause was adjourned until August 15th, 1889, at ten o'clock a. m., at the office of Chas. A. Potter, examiner in chancery.

OMAHA, NEB., *August 15th*, 1889.

The taking of testimony was resumed pursuant to adjournment, the same parties appearing on either side.

303 VELASCO LEONARD, of lawful age, being by me first examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows, examined in chief by Mr. CLARKSON:

I am a resident of Plattsmouth, and have lived there 20 years; know Samuel M. Chapman and Milton D. Polk, defendants in this suit.

109 Q. How long have you known them?

A. I have known Samuel N. Chapman ever since I have been here, 20 years, and Mr. Polk pretty nearly the same time. I cannot tell the exact date, but very near it.

110 Q. Do you know the east half of lot ten, block 28, Plattsmouth? Do you know the property I speak of?

A. If it is that lot where I am, I know it.

111 Q. This lot where your place is located?

A. Yes; I know the lot.

112 Q. You purchased that property by deed from Milton D. Polk in January, four years ago?

A. Yes, sir.

113 Q. Before that time had you made efforts to purchase the lot?

A. I had.

114 Q. Did Chapman or Polk know of your efforts to obtain that lot?

A. Mr. Chapman knew, because I had talked with him about it. I do not think I ever talked to Mr. Polk about it before that.

115 Q. Do you know whether or not before that time Mr. Polk had made efforts to sell to some one other than yourself?

A. I do not.

116 Q. What have you heard in that regard?

Objected to as hearsay, incompetent, and immaterial.

A. I never heard anything that I knew of.

117 Q. Do you know of any other offer being made for the lot?

A. By hearsay, I do.

Objected to.

304 118 Q. State what that was.

Objected to anything that he heard as incompetent.

119 Q. State what that was and who was the person that made the offer.

Objected to as hearsay and incompetent and irrelevant and immaterial.

A. I heard that Mr. Mergess wanted to buy the lot.

120 Q. For what amount?

A. He never offered him any money in cash.

121 Q. What amount did he offer for the lot?

A. I think in trade or some way he offered $2,000.00 on long time.

The answer is objected to and asks that the answer be *strocked* from the record as hearsay, incompetent, irrelevant, and immaterial.

122 Q. When did you first make overtures to Mr. Polk to purchase the lot?

Objected to as immaterial.

A. As soon as I found that he had the lot so that he could sell it I wanted to buy it.

123 Q. What was the first offer you made him for it?

A. $1,500.00.

124 Q. In cash or on time?

A. Cash.

125 Q. Did he accept that offer?

A. He did not.

126 Q. What did he say?

A. He said that he thought the lot was worth more than that; that it ought to bring more than that. I told him I did not think it ought to.

127 Q. Do you know M. O'Donahoe, defendant in this suit?

305 A. Yes, sir.

128 Q. Did you make any offers to him to purchase this lot?

A. No, sir.

129 Q. Did he make any offers to you to sell?

A. No, sir.

130 Q. Was Polk the only one you had dealings with with reference to this lot?

A. Yes, sir.

131 Q. What was Polk's first offer to see?

A. He did not make any offer.

132 Q. What did Mr. Polk — when you offered him $1,500.00? What did he say?

A. I do not think he had any price fixed on it.

133 Q. What did you finally pay for it?

A. $1,600.00.

134 Q Cash or on time?

A. Cash.

135 Q. How did you come to understand with reference to this $1,600.00?

A. We had had quite a talk over it two or three different times, and I finally told Mr. Polk that I would give him $1,600.00 cash and that was all.

136 Q. How long were those negotiations pending before you finally paid the $1,600.00?

A. I would think nearly a week; perhaps a little longer; but if I recollect right, about a week.

137 Q. What, if any, conversation did you have with Mr. Chapman with reference to the lot?

A. I do not know that I had any. I might have talked with

Mr. Chapman about it, but I do not recollect what we talked about.

138 Q. Was there or not any time between the time you
306 and Mr. Polk agreed on the price and the time when you got your deed?

A. Yes; there was some little time, I think.

139 Q. How long should you say?

A. I cannot tell you how long, but not very long.

140 Q. In the meantime did you have the title examined or looked into?

A. Yes, sir.

141 Q. Prior to the offer you made to Mr. Polk of $1,500.00 had you ever offered Mr. Chapman or Mr. Polk, representing the Robertson estate, a sum of money for the lot?

Objected to as incompetent and assuming that a state of facts does not exist concerning which there is no testimony given in this case, as irrelevant and immaterial.

A. Prior to that time I had never talked with Mr. Polk in regard to the lot at all. There might have been a time some time when I talked with Mr. Chapman, but I do not recollect that there was. I had a talk with Windom one time.

142 Q. Had you ever made any offer for the lot before you offered Polk $1,500.00?

A. Yes; one time Windom thought I could get the lot for $1,300.00.

Cross-examined by Mr. COVELL:

143 Q. At what time did you purchase this lot that you now occupy and which has been designated in a question to you as the east half of lot ten, block 28, city of Plattsmouth, according to that other answer 1886?

A. I do not recollect, but I suppose that was right—January, 1886—4 years ago.

144 Q. Have you any recollection of the date of the deed made to you?

A. I have not.

145 Q. Do you remember the time when it was made?
307 A. I think the deed was made the time that I bought the lot; the time that I paid the money.

146 Q. Can you recollect when you paid the money, not the date?

A. I paid the money in January.

147 Q. Is it or not a fact that on the 2nd day of January, 1886, this property was conveyed to you by Mr. Polk and his wife?

A. I cannot tell the date. It was conveyed to me by Mr. Polk and his wife.

148 Q. And if the deed is dated on the 2nd day of January, 1886, that is the time that it was conveyed to you, is it?

A. Yes, sir.

149 Q. When did you pay the purchase-money?

A. I suppose January 21st, 1886.

150 Q. How long prior to January 1st, 1886, was it that you first had a transaction with Mr. Polk with reference to purchasing this lot?

A. My business with Mr. Polk was all done within two or three days or three or four days. It was all done that way, the same as I would buy a lot of any other man, within two or three days. I presume before he had his money I had the deed. I cannot tell the dates.

151 Q. Did you have the title examined; and, if so, by whom, prior to the purchase of the lot by you?

A. There was a little reserve on the purchase-money kept back to examine the title; I think, three or four hundred dollars.

152 Q. Who made the examination of the title for you?

A. A. W. Creiks.

153 Q. What business was he in?

A. An attorney-at-law.

154 Q. Residence where?

A. Plattsmouth, Nebraska.

155 Q. What county and State?

A. Cass county, Nebraska.

308 156 Q. Was the title examined prior to making the deed or afterwards?

A. After.

157 Q. You may state whether or not you had any knowledge in any way, shape, or manner, at the time of making these purchases, that any person or persons or estate had or claimed any interest in the property that you purchased, other than Milton D. Polk, at the time or prior thereto.

A. At the time I purchased I did not know that anybody had any other claim on it except Milton D. Polk. Before that I knew that Shryock owned the lot at one time.

158 Q. You may state whether or not you knew at the time you made the purchase whether there was a foreclosure of a mortgage being made upon the premises against Shryock for the purpose of acquiring title to these premises under the foreclosure of that mortgage which had been given by Shryock to the estate of Ella V. Davis, deceased, and whether or not the property had been sold under the decree of foreclosure prior to the time that you made the purchase.

A. When I made the bargain with Mr. Polk I did not know anythink about any of these proceedings. I did not know anything about them—that is, when I made the first bargain and paid the first payments—and after that was made I had Mr. Kreiks examine the title, and it tells about that on the abstract.

159 Q. You may state whether or not upon examining the title of the lot it was ascertained that Mr. Polk did not have title to all of the lot, and whether or not a part of the lot had to be purchased of another party adjoining in order that a good title might be conveyed to the whole of the lot to you.

A. Yes; there was a foot of land that had been conveyed off from

that property by Shryock at one time, I think—I am pretty sure of it—and Mr. Herold owned that foot, and to make a title we had to have added to that foot.

309 160 Q. Who purchased that part from Mr. Herold, if you know?

A. Mr. Polk.

161 Q. On which side of the lot was that one foot?

A. On the east side.

162 Q. What was paid, if you know of your own knowledge, for this foot of ground?

A. $50.00; that was what was paid. Mr. Herold would not do business with Mr. Polk, and he offered it to me for $50.00, but Mr. Polk done the business after all.

163 Q. You may state whether or not you purchased this lot and paid your money in perfect good faith, without any knowledge of any kind that anybody else except Mr. Polk had or claimed any interest in the lot that you purchased.

A. That is the way I purchased it.

Redirect examination by Mr. CLARKSON:

164 Q. This foot of ground that was afterwards purchased was to give you a part of a partition wall, was not it?

A. No, sir. I purchased the wall separate. I purchased that myself and got a deed from Mr. Herold for half of the wall and half of the land that the wall was on, and this foot was outside the wall.

165 Q. At the time that you purchased, was there any improvements on the lot?

A. No, sir.

166 Q. You wanted this extra foot for the purpose of putting up an improvement?

A. Yes, sir.

167 Q. 21 feet wide?

A. 66 feet long and 22 feet between the two walls—that is, there were buildings on each side and 22 feet in the clear.

168 Q. When you came to look into the title of the land did you find the quitclaim deed from Shryock and Herold?

310 A. Yes, sir.

169 Q. Do you remember what that covered?

A. No; I do not.

170 Q. Whether it was 21 or 20 feet?

A. I do not know. I suppose it was 21 feet; that was what Shryock had.

171 Q. What did Creiks say to you after he had examined the title?

A. He said the title was all right in Polk.

172 Q. Why were those proceedings had afterwards?

A. What proceedings?

173 Q. Mr. Covell referred to some mortgage proceedings. Did you know anything about those?

A. No. I did not understand what the mortgage proceedings were.

174 Q. Mortgage foreclosure proceedings of the estate of Ella V. Davis *vs.* Shryock.

A. That was all had a long time ago. I cannot tell you about that.

175 Q. Was not Polk's sheriff's deed in this foreclosure proceedings given after you had bought from him?

A. I think not. I think the abstract does not show *it that* was.

176 Q. You think it was all fixed up before your purchase from him was consummated?

A. I think so.

177 Q. Do you know anything of the stipuoation entered into between Windom and Chapman & Polk with reference to the settlement of this Shryock proceedings?

A. No, sir.

178 Q. Do you know of a stipulation to the effect that the deed, in any, made by Shryock—that deed, if any, made for the foreclosure proceedings was to go to Alexander H. Robertson, trustee?

A. I do not know.

179 Q. The foot purchased was in addition to the property
311 that was first deeded to you by Mr. Polk, was not it?

A. Do you mean it was after the first deed?

180. Mr. CLARKSON: Yes; after the first deed.

A. No; I think the deed covers the whole.

181 Q. The deed shows, anyway?

A. Yes, sir.

182 Q. Do you know whether before you purchased from Polk there had been built on the east half of lot ten, block 28, a building that had been burned down?

A. Yes, sir.

183 Q. Do you know the character of that building?

A. Yes, sir.

184 Q. What was it?

A. It was a little building, a very small wooden building, put up. It was one of those rattle-traps all the way through. It was of no account.

185 Q. Do you know whether it rented for anything?

A. Yes; it would rent probably for $40.00 or $50.00, I presume.

186 Q. A month?

A. Yes, sir.

187. Mr. COVELL: When was this building burned down to which your attention has been directed?

A. It has been about ten years now.

188 Q. It was about 1880?

A. I think so, or 1881.

The signature of this witness to this deposition is waived by all parties.

SAMUEL WAUGH, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, as hereinafter certified, deposeth and saith:

Examined in chief by Mr. CLARKSON:

312 I reside in Plattsmouth, and have resided there three years last June. I know Chapman and Polk, defendants.

189 Q. Mr. Polk gave you a mortgage of the west 20 feet of lot 12, block 29, Plattsmouth?

A. He gave me a mortgage. I really do not know the description of the property. It is on Main street opposite the opera-house. I could not tell the number of the lot.

190 Q. The place formerly occupied by Mr. Slater, do you know?

A. According to my recollection Slater occupied two full lots. If he did, that is the ground, evidently. There is no question about that.

191 Q. That mortgage was given as collateral security for notes made to M. J. Kennard, was not it?

A. Yes, sir.

192 Q. How do these notes run?

A. To John F. Polk.

193 Q. And by Mr. John F. Polk endorsed?

A. Yes, sir.

194 Q. To whom?

A. In blank, according to my recollection.

195 Q. These notes were transferred to you by Milton D. Polk?

A. Yes, sir.

196 Q. Do you remember the aggregate amount of them?

A. Three notes, $560.00 each.

197 Q. Have any of those notes been paid?

A. No, sir.

198 Q. Have you made any efforts to collect them?

A. Yes, sir.

199 Q. From whom?

A. Mr. Kennard.

200 Q. And refused payment?

A. No; he requested an extension of time, which, under consideration, I granted him?

313 201 Q. Do you consider him good?

A. I do not know. I never saw him until about a month ago. At the time of purchasing the notes I did not know that there was such a man.

202 Q. Do you know of any property that he owns?

A. No, sir.

203 Q. This mortgage, I understand, was given simply to secure these notes as additional security to the names of John F. Polk and Milton D. Polk?

A. Yes, sir.

Cross-examined by Mr. COVELL:

204 Q. Do you remember the date when the mortgage was given?

A. No; I could not tell. I do not remember so particularly. I did not buy those notes for myself and have not kept as close a track of the matter. I bought them for outside parties. I know that since I purchased two years' interest has been paid; about two years.

205 Q. If the date of the mortgage was the 24th of August, 1887, would that be about the date when you purchased them?

A. Yes; that is about the time; about two years.

206 Q. For what purpose was this mortgage executed to you by Milton D. Polk and Katie Polk, his wife, upon the premises?

A. To secure the payment of these notes. I was not acquainted with Kennard and wanted security, and I considered that was good.

207 Q. These notes are still unpaid, are they?

A. Yes, sir.

208 Q. Are they due or not due?

A. Due the first of this month.

209 Q. Has any part of them been paid?

A. The interest was paid up to the first of August this year.

210 Q. Of the principal there remains unpaid the whole of it?

A. Yes, sir.

314 211 Q. When you took this mortgage upon the premises for the purpose of collateral security for the payment of these notes, state whether or not you had any knowledge in any way or manner of any person or persons or estate claiming any interest whatever in or to the property mortgaged to you by Milton D. Polk and Katie Polk.

A. I did not.

Redirect examination by Mr. CLARKSON:

212 Q. You granted Mr. Kennard an extension?

A. Yes, sir.

213 Q. For how long a time?

A. For one year—that is, conditionally. First of all, the notes belonged to one of my brother-in-laws and I did not have authority positively to extend the paper; at the same time I told Mr. Kennard if he would pay one of the notes I would insure him, or, at least, so far as I knew, that he could have another year's time on the other two, and that stipulation has since been agreed to; I correspond with Mr. Palmer, who owns the notes.

214 Q. Has Mr. Kennard paid one of the notes?

A. Not yet; he told me that he thought he could pay it inside of 60 days.

215 Q. From the first of August?

A. From the 24th of August, the time that the agreement was made. I notified him to pay the notes and he came down and requested an extension.

216. Mr. COVELL: Where does Mr. Kannard live, if you know?
A. I have nothing further than he lives in Omaha.

The signature of this witness to this deposition is waived by all parties.

315 OSWALD GUTHMAN, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, examined in chief by Mr. CLARKSON, testified as follows:

I live in Louisville, Nebraska, Cass county; have lived in Plattsmouth; lived there from 1871, November 3rd, up to February 1st, 1887.

217 Q. During the years 1885 and 1886 while you were living in Plattsmouth what, if any, official position did you occupy during the years 1885 and 1886?

A. I was assessor for the first ward in Plattsmouth, Nebraska.

218 Q. In your position as assessor and otherwise were you familiar with the values of property in the first ward at Plattsmouth during those two years?

A. As near as my judgment serves me, I was.

219 Q. In assessing the valuation of property in Plattsmouth for the year 1885 what rule did you follow?

Objected to as immaterial and incompetent and irrelevant.

A. According to the meeting of the assessors in 1885 and the investigation that I made in the assessors' books last night and this morning the rule was to assess one-third its actual value in 1885.

220 Q. What was the rule in 1886?

Objected to as incompetent, irrelevant, and immaterial.

A. The rule was one-fourth in 1886 of its actual value on realty, and on personal one-third, according to the books which I examined last night and this morning. I went in this morning and found the clerk and examined the book with him to see that this is — true copy of the book.

221 Q. In 1885 at what amount did you assess the value of the north half of block 2, in the city of Plattsmouth?

Objected to as irrelevant, immaterial, and incompetent.

316 A. $750.00.

222 Q. What was the value of that property at that time, in your opinion?

Objected to for the same reason, incompetent, immaterial, and irrelevant.

A. To my opinion it was worth about $2,200.00 or $2,300.00.

223 Q. In 1885 what did you assess the value of lots one and six, block 89, city of Plattsmouth?

Objected to as immaterial, irrelevant, and incompetent.

A. $150.00.

224 Q. In your opinion at that time what was the actual value of that property?

Objected to as incompetent, immaterial, and irrelevant.

A. Perhaps $450 or $500.00.

225 Q. All of these questions relate to the fair market value of the property?

Objected to as incompetent, immaterial, and irrelevant.

A. Yes, sir.

226 Q. At that time, in the year 1885, at what value did you assess the west 21 feet of lot ten, block 28, Plattsmouth?

Objected to as incompetent, immaterial, and irrelevant.

A. $450.00.

227 Q. What was its actual value, in your opinion?

A. $1,400.00 or $1,500.00.

228 Q. At that time at what value did you assess the west 20 feet of lot 12, block 29, Plattsmouth?

Objected to as incompetent, immaterial, and irrelevant.

A. $575.00.

229 Q. What, in your opinion, was its actual market value at that time?

A. $1,650.00 or $1,750. I assessed them on the same basis as other property, to the best of my judgment.

317 230 Q. At that time at what did you assess the value of lots one to six, inclusive, in block 8, White's addition to Plattsmouth?

Objected to as incompetent, immaterial, and irrelevant.

A. $120.

231 Q. In your opinion, what was *its* market value of that property at that time?

Objected to as incompetent, immaterial, and irrelevant.

A. I presume $400.00.

232 Q. At what did you assess the value of lots 7 to 12, inclusive, block 5, White's addition, the same year—1885?

Objected to as incompetent, immaterial, and irrelevant.

A. $500.00.

233 Q. In your opinion, what was the value of the property at that time?

Objected to as incompetent, immaterial, and irrelevant.

A. I do not believe it could be bought for less than $1,600 or $1,700.

234 Q. Is it your opinion that that was its value?

A. Yes, sir, or I would not have assessed it that much.

235 Q. Previous to the year 1885 had you been assessor for that ward?

Objected to as immaterial, irrelevant, and incompetent.

A. I have not.

236 Q. That was your first year?

A. Yes, sir.

237 Q. How long after that did you continue to be assessor?

A. One more term.

238 Q. You served two terms?

A. Yes, sir.

239 Q. What, if any, efforts did you make to acquaint yourself with the values of Plattsmouth property?

A. I walked over the ground and also asked men who had
318 judgment of it and looked through the assessment books and got my experience of the values of the property. I asked men that had an idea and went through the books and looked the matter up.

240 Q. Did you buy or sell any property in that ward?

A. Yes, sir; I bought and built two buildings, one building called the Perkins house; and I built myself a dwelling in the ward where I lived. I built my dwelling in the spring of 1880. In 1880 the property was not worth one half what it was in 1885 and 1886.

241 Q. When did you relinquish the office of assessor?

A. After I filed my books and records in 1886.

242 Q. At what time of the year did you make this assessment?

A. I started out the first day of April of each year assessing and I had to deliver the books on the first day of June each year.

243 Q. That was done according to law?

A. Yes, sir.

244 Q. Pass to the year 1886; at what did you assess the value of the north half of block two in the city of Plattsmouth?

Objected to as irrelevant, immaterial, and incompetent.

A. $780.00.

245 Q. In your opinion, what was the market value of that property at that time?

Objected to as incompetent, immaterial, and irrelevant.

A. $2,400.00 or $2,500.00.

246 Q. That was the year I believe that you aimed to assess the property at one-fourth its actual value?

A. Yes, sir.

247 Q. At what did you assess the west 21 feet of the east half of lot 10, block 28, Plattsmouth?

Objected to as immaterial, irrelevant.

A. $450.00.

319 248 Q. In your opinion, what was its value at that time?

Objected to as incompetent, immaterial, and irrelevant.

A. About $1,800.00 or $1,900.00.

249 Q. At what did you assess the west 20 feet of lot 12, block 29, Plattsmouth?

Objected to as irrelevant, immaterial.

A. $650.00.

250 Q. In your opinion, what was its value at that time?

Objected to as immaterial, irrelevant, and incompetent.

A. I think it would run between $2,600 and $2,800.00.

251 Q. At what did you assess the value of lots one to six, inclusive, block 89, city of Plattsmouth?

Objected to as incompetent, immaterial, and irrelevant.

A. $175.00.

252 Q. In your opinion, what was the actual value of that lot at that time?

Objected to as immaterial, irrelevant, and incompetent.

A. Perhaps $750 or $800.00; perhaps $700.00. I could not give that close, but I think that is the correct value.

253 Q. At what did you assess the value of lots one to six, inclusive, in White's addition, block 8?

Objected to as incompetent, immaterial, and irrelevant.

A. $140.00.

254 Q. What, in your opinion, was its value at that time?

Objected to as incompetent, immaterial, and irrelevant.

A. Perhaps six hundred dollars, and maybe a little more.

255 Q. At what did you assess lots 7 to 12, block 5, White's addition, at?

Objected to as incompetent, immaterial, and irrelevant.

A. They run from $2,000 tc $2,300.00.

256 Q. I want to remodel a question I put to you before. At what, in 1885, did you assess the value of the west 21 feet of
320 the east half of lot ten, block 28?

Objected to as incompetent, immaterial, and irrelevant.

A. $450.00.

257 Q. What, in your opinion, at that time was its actual value?

Objected to as incompetent, immaterial, and irrelevant.

A. I would think it would be $1,300 or $1,400.00.

258 Q. This property about which you have testified—were you familiar with it as the property of the Davis estate?

Objected to as incompetent, immaterial, and irrelevant.

A. The way I assessed it—the assessor's books showed the Davis estate laid so and so, and I went over the ground and looked at it and saw what *it* was going on and assessed it accordingly.

259 Q. It was assessed as the property of the Davis estate?

A. Yes, sir; according as the county clerk made out the assessor's books.

260 Q. You knew the general location of the property, then?

A. Yes, sir.

261 Q. With reference to the north half of block 2, city of Plattsmouth, known as the surveyor general's property, do you know the location of lots one and two, block 3?

A. That is northwest of the surveyor general's office, if I am not mistaken.

262 Q. You know the two lots?

A. I think, if I am not mistaken, it belongs to Mr. Howsworth.

263 Q. Do you know whether or not there was any improvements on lot one, block 3, and also lot 2, in 1884?

A. No; there was none.

264 Q. Do you know of an improvement having been put there since?

A. When I started out on the first day of April they were just starting to build; they had a little work done and some material on the ground, and, of course, I did not assess it as personal,
321 because I did not think it as liable; but what they were to build on, I added a little bit to that, I think, but I would not be positive. It is generally customary not to take a man that is building that year unless he has a story or half story or a cellar wall; he may tax that up, but the building material it is not customary to assess.

265 Q. The first time that building materials went on lots one and two, block three, was in the spring of 1885?

A. Yes; the first year I started out.

266 Q. At the time that you made the 1885 and 1886 assessments had the improvements been made in block 5, White's addition?

A. If I had my map here I could tell. I have every improvement marked that was made, but I could not tell whether any was made or not.

267 Q. What was the general character of lots one and two, block 3, with reference to the surface of the lot, grade, and so on?

A. I think they were a little rough until Housel commenced to build. I think that he done some grading.

268 Q. Was it or not a good building location?

A. Yes, sir; that is as nice as a man wants for a dwelling.

269 Q. How did it compare with the north half of the block 2, across on the east side?

A. It was as good as that across, I think; it took, maybe, a little more work and maybe not, but I think it was just as good.

270 Q. How did lots one and two, in block three, compare with lots in block 8, White's addition, and block 89, Plattsmouth?

A. That lies north of Housworth; a block or so, I think.

271 Q. Let us see the fractional lots in block 89 and fractional lot in block 8, in White's addition, which adjoins.

A. That is a nice dwelling place.

272 Q. Do you know whether or not there was a rise in the value of real estate from 1884 on?

322 Objected to as immaterial, irrelevant, and incompetent.

A. Good property has been increasing right along down there. When I was building down there my property cost me about one thousand dollars, and I had an offer for it in 1883 or 1884 for $1,300.00, and to-day I would not sell it for $1,700.00 or $1,800.00. It has been going gradually up, and I think it has been increasing from seven to ten per cent. a year.

Cross-examined by Mr. COVELL:

273 Q. Do you know of any real estate having been sold on the market in 1885 in the vicinity of the lots concerning which you have testified as to the assessment made by you?

A. Yes, sir.

274 Q. What lots?

A. I think that Drummond bought some ground up there where he built his residence, but who from I could not tell or what price I could not tell. I never investigated the record.

275 Q. What year did he make that purchase?

A. I think it must have been in the fall of 1886 or, perhaps, in the summer of 1887.

276 Q. I was asking you about the year 1885, at the time or about the time you made your assessment.

A. I could not tell anything about that, if there was any sold or not.

277 Q. You do not now remember and do not now know of any property having been sold between the first of April, 1885, and the first of June, 1885, in the vicinity of the property which you have been testifying about similarly situated?

A. If I had time to investigate the books and refresh my memory I could testify, but I cannot think of any now.

278 Q. At the time that you made your first assessment, in 1885, did you then know of any sales having been made or any
323 property similarly situated in the vicinity if any particuoar property, concerning which you have been testifying, on the market in Plattsmouth?

A. Not that I know of.

279 Q. In the year 1886, say between the first day of March, 1886, and the first of June, 1886, at the time you made the assessments of the property concerning which you have testified, did you then know of any property similarly situated in the vicinity or property concerning which you have been testifying having been sold on the market?

A. Not that I know of.

280 Q. Do you now remember or know*ing* of any property having been then or prior thereto, in the year 1886, sold adjoining the property or adjacent to it concerning which you have been testifying, similarly situated ?

A. I think that Leonard purchased a little lot and Drummond, I think, purchased some of Mr. Polk, but I would not be positive; that is what I heard from hearsay.

281 Q. You do not know of your own knowledge what the value of property concerning which you have been testifying was upon the market in the spring of 1885 and in the spring of 1886, and the only knowledge which you have and which is your judgment and guess-work respecting the same, is it or not?

A. No; there is no guess-work about it. I have been asking real-estate agents who were well acquainted with property and their valuation, and taking the old assessment books and looking them over and going over the ground, and knew what lots were selling for along Main street and outside, according to the locations I assessed that way, according to those prices and basis.

282 Q. The prices or valuation which you have put upon the pieces of property concerning which you have been testifying has not been made from actual sales, but from what others have
324 told you and examinations made by you of various pieces and your own judgment, too, in connection with it. Is that the fact?

A. It is from actual sales and examinations of books and inquiring of real-estate agents.

283 Q. What actual sales, if any, were made, and at what price, and of what property, adjacent to the property concerning which you have been testifying or any of it, in 1885, at or about the time that you made the assessment for the year 1885?

A. I do not know whether any was sold or not, but lots at that time were running from $1,200 to $1,800, all according, to localities, in that year; on the lower part of Main street lots were not as high as on the upper part.

284 Q. What actual sales, if any, were made of any property, and at what prices and of what property, if you know, lying in the vicinity of the property concerning which you have been testifying here, in the spring of 1886, at or about the time when you made the assessment for the year 1886?

A. I think that White either bought or sold or Mr. Polk purchased or sold. I think Polk sold the lot to Leonard in 1886 at $1,600 or $1,700; I do not know which.

285 Q. Do you know of any other property being sold, other than this sold by Polk or Leonard, at or about that time?

A. There was a piece of property sold right due east of the Perkins house, and one man, Lewis Croel—it was a kind of a rattle-trap of a building and lot, for $3,800. I do not think it was an extra location.

286 Q. How far is the Perkins house east of the property on Main street that you have been testifying about?

A. That property east is on the second door, about 22 or 23 feet.

287 Q. About how far is the Perkins house east of the property on Main street that you have been testifying about as as-
325 sessed by you heretofore—I refer to the property now occupied by Loenard, on Main street—how many blocks east?

A. That is west.

288 Q. How many blocks east is the Perkins house?

A. One block and one lot.

289 Q. The Lew Croel lot that you have mentioned, was it improved?

A. There was an old brick building on.

290 Q. Was it one or two story brick?

A. Two.

291 Q. How far back did it run from Main street?

A. It run on the fift-, if I am not mistaken.

292 Q. What was the size in front—your best judgment—was it a full lot, 22 feet?

A. These lots are different from other lots. The lots on such a street they run this way.

293 Q. About what size?

A. I would judge between 21 and 23.

294 Q. It was a two-story brick building?

A. Yes, sir.

295 Q. Did you know of the property in 1885 where Mr. Polk now lives, and its condition in 1885? And, if so, you may state it—the property in which Mr. Polk lives.

A. I have not examined what condition it was in only from the looks of it.

—. Answer the question.

(The question is read by the stenographer.)

A. I do not know the condition the property was in.

296 Q. Did you know or do you know the situation of the lots with reference to the surface of the lots in 1885 and upon which the house stands now occupied by Mr. Polk?

A. I did not pay any attention to that.

297 Q. You do not have any recollection now as to the surface of the lots?

326 A. No, sir.

298 Q. Was there any improvement on them at that time?

A. I do not remember. I have a map of the new improvements. If I had that I could tell.

299 Q. You do not remember now whether there was any improvements or not on that?

A. No; I do not remember.

The signature of this witness to the deposition is waived by both parties and all parties.

ISAAC E. CONGDON, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, examined in chief by Mr. CLARKSON, testified as follows:

300 Q. You are a member of the firm of Congdon, Clarkson & Hunt?

A. Yes, sir.

301 Q. Do you know Micheal O'Donahoe, the defendant?

A. Yes, sir.

302 Q. Where did you meet him?

A. In the office of Congdon, Clarkson & Hunt, in the library-

room, where we are at present, also in the private office of Mr. Clarkson, on or about the 17th day of October, 1888.

303 Q. At that time did you have a conversation with O'Donahoe as to the deed from Alexander H. Robertson to O'Donahoe and from O'Donahoe to Polk?

A. Yes, sir.

304 Q. You may state substantially all that conversation.

Objected to as incompetent, irrelevant, and immaterial and seeking to impeach testimony of a witness produced on the part
327 of the plaintiffs in this case as hearsay on behalf of Samuel M. Chapman.

A. Byron Clark, an attorney living in Plattsmouth, came into our office on the 17th day of October last with O'Donahoe, I think, in the morning. Mr. Clark and Mr. O'Donahoe, and I think Mr. Clarkson, and possibly Mr. Hunt and myself, sat in this room where we are now sitting, and talked over this matter. O'Donahoe was probably here during the morning, probably an hour. In the morning while he had talked to Mr. Clarkson some in his private office he went out and came back again about three o'clock, or a little while before, and he and myself engaged in conversation in the room where we now sit, and I asked O'Donahoe to tell me about the transaction concerning which we had spoken in the morning, they being relative to this case. O'Donahoe stated that Mr. Polk came to him and offered him one hundred dollars and one hundred dollars for his old woman, as he expressed it, to engage in and about this transaction. Certain property was to be deeded to O'Donohoe, and Mr. Polk was to pay down one thousand dollars and O'Donohoe was to give Polk a mortgage to secure three notes of one thousand dollars each made by O'Donohoe. Prior to this O'Donahoe had resisted the proposition made by Mr. Polk to his, O'Donohoe's, wife, saying to her that he would get one hundred dollars and she would get a hundred dollars, and that probably there would be trouble hereafter concerning the transaction; that his wife stated to him that Polk would not give him the money, and that O'Donohoe replied to her, He has got to give it to me, because I hold a club over him; thereafter when the notes were sent to the bank at Plattsmouth for collection O'Donoho notified Mr. Polk and Polk paid the note, as I remember. O'Donohoe kept demanding from Polk the balance of the money which Mr. Polk had offered to him, but had not paid; that Polk was hard up, or complained of being hard up, and did not pay him; whereupon he wrote to Robertson, notifying him of the transaction. I will further say that, deeming
328 the conversation somewhat important, or rather that O'Donohoe had narrated to me as important, immediately upon the going out of the office of O'Donohoe I went to Mr. Daniels, our stenographer, and dictated to him what O'Donohoe had told me, noting the date and day and the time. I have now with me that original dictation, which on that day and immediately upon its being written out I examined and approved. I have since read it over in order to refresh my memory.

The defendants move to strike the answer of the witness from the record as hearsay and incompetent. This objection and motion is made on behalf of the defendants Polk, Samuel M. Chapman, V. Leonard and defendant Samuel Waugh and all the other defendants except Michael O'Donohoe, and further object on behalf of the other defendants as irrelevant and immaterial.

305 Q. Have you that paper?
A. Yes, sir.
306 Q. Will you produce it?
A. Here is the paper. (The paper is here handed to the examiner and identified by him and marked August 15th, 1889, Exhibit 1, and offered in evidence.)

Objected to as hearsay, incompetent, immaterial on behalf of all the defendants except Michael O'Donohoe.

307 Q. Have you now narrated all that you can recollect of the conversation with O'Donohoe?
A. I have.

The cross-examination of this witness is waived by all parties.
The signature of this witness to this deposition is waived by all perties.

ALEXANDER H. ROBERTSON, the plaintiff, sworn in his own
329 behalf, examined in chief by Mr. CLARKSON, testified as follows:

I am trustee of Ella V. Davis, deceased, and plaintiff in this action.
308 Q. As such trustee in December, 1885, and from April, 1885, you had charge and control of the property the subject of this controversy?
A. I did, sir.
309 Q. Who was your predecessor in the trust?
A. W. A. Stewart.
310 Q. At the time you took upon yourself the trust of this estate did you know Samuel M. Chapman, the defendant?
A. No, sir; I did not.
311 Q. Did you understand from Mr. Stewart that Mr. Chapman was the attorney for the estate in Plattsmouth?
A. I did, sir.
312 Q. When did you first meet Mr. Chapman in Plattsmouth?
A. Along about the 5th or 6th or early part of October, 1885.
313 Q. Do you know what was the occasion of your visit to Plattsmouth at that time?
A. The representative of the estate of Ella V. Davis as to the advisability of disposing of that property.
314 Q. By that property you mean the property in controversy?
A. Yes, sir.
315 Q. At that time did you meet Milton D. Polk, the defendant?
A. I was introduced to Milton D. Polk by Mr. Chapman as his partner.

316 Q. In what business?

A. Attorney-at-law. I had never heard of Mr. Polk previous to that time.

317 Q. What was the substance of your first conversation with Messrs. Chapman and Polk on your arrival at Plattsmouth?

A. I have already stated that I ascertained from Judge Stewart, my predecessor, that Mr. Chapman had been the agent and
330 attorney of the estate. I went to Plattsmouth via St. Louis, having some interests there, and I telegraphed, I think, from St. Louis or perhaps Kansas City to Mr. Chapman that I would be at his office on the next day or a day certain that I mentioned; I got to Plattsmouth early in the morning, I think it was five or six o'clock in the morning, and I recollect I attempted to get a little sleep at a hotel where I registered, and when I came down to breakfast and was informed that Mr. Chapman had already called at the hotel to see me I then either went to his office or he came to the hotel the second time, I do not exactly recollect, but anyhow he introduced himself to me as Mr. Chapman and knew directly what I wanted, because I had telegraphed him that I wanted to see him, and Mr. Chapman told me the first thing that he would advise me that I should go over the property and see it with him. I drove with Mr. Chapman alone in the buggy; I knew nothing about the location of the property then except what Mr. Chapman told me. We went over the property, and I agreed with him that in its condition, evidently not yielding much of any income, the expenses and taxes about counterbalanced the rent; I agreed with Mr. Chapman that it should be sold; Mr. Chapman advised me that it was his undoubted judgment that the property should be sold, and stated his reasons therefor, that it was in bad shape; that it was yielding little income; that I, as trustee, lived a very great distance away and could not give it my personal attention; that to develope the property would require a considerable expenditure of money, and that it was his judgment and advice as my attorney that it should be sold. I knew nothing whatever about the values of property in Plattsmouth, as I know nothing at the present time, relying entirely and absolutely upon Mr. Chapman's advice and judgment as my attorney; he advised me if the property could be sold for four thousand dollars that I ought to sell it at that price; he told me that there had been some negotiations
331 with some parties whose names I cannot really recollect looking to a sale of the property at that figure. Mr. Polk, who had in the meantime been introduced to me as Mr. Chapman's partner, was sent out to look up this person or persons who had been negotiating for the sale at four thousand dollars. I think I met a man, perhaps 50 years of age, rather Western in his notion of Western style, who was introduced to me, I think, as the man who had been willing to pay four thousand dollars. He, for some reason, by reason of the investments he had made, did not seem disposed to say readily that he would pay four thousand dollars, though, however, that I thought the property was worth from $3,500 to $4,000.00. I had another matter in connection with the

estate which was the subject of conversation between Mr. Chapman, Mr. Polk, and myself with reference to a claim which the estate of Ella V. Davis had against a man named Shryock. Mr. Shryock was represented by an attorney, who—my only recollection of him was that he was the brother-in-law of the cashier of one of the banks, whose name I could not tell. I was advised by Mr. Chapman that inasmuch as this property—the improvements upon it had been destroyed by fire and that Shryock, as they represented, was a man of little or no means—that the better way of settlement with Shryock would be to take a deed from Shryock to us in full payment if the estate's claim against Shryock, and at the same time Shryock was to release the estate from any claim or demand which he alleged that he had against it for services which he had rendered the estate; in other words, the property was to be deeded by him in full settlement of all matters between Shryock and Chapman—prepared a paper, which if I saw I think I could identify, it being a stipulation to carry out the agreement of which I have spoken. Mr. Shryock himself was not present. He was some little distance from Plattsmouth, because I recollect that there was some
332 telephoning that was done by the counsel of Shryock before that according to the settlement. That agreement was that the estate was to get this Shryock lot in full settlement of all claims.

Objected — witness detailing the contents of any written instrument without producing the instrument itself.

318 Q. Has that agreement ever been in your possession?

A. No, sir.

319 Q. Do you know in whose possession it is?

A. It was left at Plattsmouth, to be carried out.

320 Q. In whose possession?

A. Mr. Chapman's and this attorney who represented Shryock.

321 Q. Have you ever seen the paper since?

A. I have not; but, independent of any paper, I know that that was the understanding that we had after consultation on the subject. Mr. Chapman represented *to* me as my attorney and this gentlemen, whose name I cannot recollect, represented Mr. Shryock.

322 Q. How long did you stay in Plattsmouth?

A. I got there about five or six o'clock in the morning and I did not see Mr. Chapman, I think, before 9 o'clock. As I say, I went to my room at the hotel and after breakfast, I think about 9 o'clock, I saw Mr. Chapman, and left Plattsmouth and came up to this city, Omaha, on a train coming through Plattsmouth about 5.30, I think.

323 Q. Is that the only time you have ever visited Plattsmouth?

A. It is the only time that I s-opped at Plattsmouth—that is, I got on the train going from Omaha the next evening after the time of which I have spoken and got off to see Milton D. Polk, who was to meet me at the train.

324 Q. Did Mr. Polk meet you at the train the next evening after the day of your arrival in Plattsmouth?

A. He did.

333 325 Q. What conversation did you have with him at that time?

A. As I say, the whole matter was under discussion, and being —, was to find a purchaser of this property at four thousand dollars, Messrs. Chapman and Polk having advised me that that was a fair valuation and advisable for the estate, and as I ascertained that a purchaser on that day that I was there could not be found at $4,000.00, and Mr. Polk promised to meet me at the train the next evening to inform me whether or not he was able to consummate such a sale. When I saw him at the train, which was only a few minutes in the depot, he told me that he thought that he would be able to sell the property at $4,000.00, not naming, if I recollect right, the purchaser.

326 Q. Apart from this gentleman of about 50 years with whom you talked as to the value, do you remember of having a conversation with an attorney representing Mr. Shryock?

A. I recollect, I think, in Mr. Chapman't office, during the time that the Shryock matter was being attended to, or just after it had been attended to, Mr. Chapman said that he had advised me to sell the property at $4,000.00 and asked this attorney what was his judgment with reference to the value of the property, and I think that this attorney made some calculation which coincided with Mr. Chapman's views, as I understood them, viz., that $4,000.00 was a fair price. I, however, gave but little attention to what anybody said about it except that of Messrs. Chapman and Polk, whom I regarded entirely in the light of my attorneys and whom I supposed would represent me fairly and with perfect integrity.

327 Q. What, if any, arrangements did you make with Messrs. Chapman and Polk with reference to the sale of the property and with reference to the legal proceedings?

A. I discussed the matter with Mr. Chapman and Polk, especially with Mr. Chapman, who was the senior lawyer, as to whether
334 I was authorized by the terms of the will of Ella V. Davis to sell this property independent of legal proceedings. I was perfectly familiar with the terms of the will, and I had grave doubts as to whether I had any power to sell the property independent of a decree, and I further recollect with perfect distinctness that I said, independent of the question whether I had the power and discretion to sell this property, that I preferred very much, inasmuch as I had no knowledge myself as to values—that I preferred that a decree and proper proceedings be had and a decree obtained authorizing the trustee to sell the property.

328 Q. What, if any, arrangements did you make with them as to their applying for legal proceedings and sale of the property?

A. The understanding was, without any question of doubt, that the attorneys were to take the proper proceedings and a decree had under which the sale was to be made, and that the attorneys were to charge a commission of ten per cent. on the amount of the sale, as I had visited the West in connection with this matter. After full discussion it was agreed between Chapman and Polk and myself that the fees should be divided between myself and Chapman & Polk;

in other words, that they were to have one-half of the fees and I one-half of the fees for the trouble and expense I was put to in coming to the West.

329 Q. Was there anything said about the general rule between attorneys where one gives another business?

A. They said it was perfectly reasonable, and that they acquiesced with perfect willingness in the matter. I even stipulated that the fees should be allowed by the court.

330 Q. Which court?

A. The court at Plattsmouth.

331 Q. After leaving Plattsmouth and returning home did
335 you have any agreement with Messrs. Chapman and Polk with reference to the legal proceedings and the sale of the land?

A. I did, sir. I had a letter that was written some time in Oct. and that same year, viz., 1885, and from Samuel M. Chapman, advising me to sell the property at $4,000.00.

332 Q. I now hand you letter of October 22nd, from Plattsmouth, and ask you if that is the letter received by you from Messrs. Chapman & Polk after your return to Baltimore.

A. This is a letter which I received from Samuel M. Chapman.

333 Q. Are you familiar with Chapman's handwriting?

A. I saw Mr. Chapman write in his office in the course of this matter. My recollection is that I have received no more letters than this from him—that is, I received one or more letters from Mr. Chapman before I went to Plattsmouth.

334 Q. Can you swear that that is in Mr. Chapman's handwriting, and that that is his signature?

A. To the very best of my belief and knowledge, this is in his handwriting. It was entirely in accord with our business transactions there and in furtherance of that transaction, and I may say that I acted upon that letter.

The plaintiff offers in evidence the letter dated October 22nd, 1885, to A. H. Robertson, executor of the estate of Ella V. Davis, and signed Samuel M. Chapman.

Objected to as incompetent, immaterial, and irrelevant on behalf of all the other defendants except Chapman & Polk, marked Exhibit "2."

335 Q. I will call your attention to letter dated November 14, 1885. Was that received by you from the firm of Chapman & Polk?

A. It was received by me. I recognize this as in the handwriting of Milton D. Polk.

336 Q. You are familiar with the handwriting of Mr. Polk?
336 A. I have had considerable correspondence with Mr. Polk.

337 Q. Can you swear that that is in his handwriting?

A. I will swear that that is in his handwriting.

338 Q. And his signature?

A. Yes, sir.

The letter last referred to is offered in evidence, being dated No-

vember 14th, 1885, and directed to A. H. Robertson, Esq., Baltimore, Maryland, and signed Chapman & Polk. Exhibit 3.

The defendant objects, on behalf of the defendants represented, as incompetent, irrelevant, and immaterial, except as to Chapman and Polk.

339 Q. I will call your attention to letter of November 28th. That letter was received by you?

A. It was, sir, and I identify it as in the handwriting of Milton D. Polk.

The plaintiff offers the letter in evidence, being dated November 28th, 1885, and directed to Hon. A. H. Robertson, Baltimore, Md.; signed Milton D. Polk, account Chapman & Polk. Exhibit 4.

Objected to on behalf of all of the defendants represented, except Chapman & Polk, as irrelevant, incompetent, and immaterial.

340 Q. I will call your attention to a letter of December 12th, 1885. Was that letter received by you?

A. Yes, sir; I identify this letter.

341 Q. In whose handwriting?

A. In the handwriting of Milton D. Polk.

342 Q. Whose signature?

A. The signature is in his handwriting, signed Chapman & Polk, by Polk.

The plaintiff offers the letter in evidence dated December 12th, 1885, to A. H. Robertson, Esq., Baltimore, Md.; signed Chapman & Polk, by Polk.

337 Objected to by all the defendants represented, except Chapman & Polk, as irrelevant, incompetent, and immaterial.

A copy of the letter is hereto attached, marked Exhibit 5.

343 Q. I will call your attention to a letter of December 22nd, 1885. Was that received by you?

A. It was.

344 Q. In whose handwriting and whose signature is it?

A. I identify it as in the handwriting of Milton D. Polk, and signed by Milton D. Polk, Chapman & Polk.

The plaintiff offers the letter last referred to in evidence, dated December 22nd, 1885, directed to Hon. A. H. Robertson, Baltimore, Md., and signed Milton D. Polk, account Chapman & Polk.

Objected to on behalf of all of the defendants represented, except Chapman & Polk, as immaterial, irrelevant, and incompetent.

A copy of the letter is hereto attached, marked Exhibit 6.

345 Q. I will call your attention to a letter dated January 22nd, 1886.

A. I recognize it as being in the handwriting of Milton D. Polk and signed Milton D. Polk.

346 Q. That was received by you?

A. Yes, sir, and signed by Milton D. Polk.

The plaintiff offers the letter last referred to, dated January 22nd, 1886, in evidence, addressed to Hon. Alexander H. Robertson, Baltimore, Md., and signed Milton D. Polk; also Polk.

Objected to on behalf of all defendants represented, except Chapman & Polk, as immaterial, irrelevant, and incompetent.

347 Q. I will call your attention to a letter dated January 26th, 1886. In whose handwriting and whose signature is it, and was it received by you?

A. This letter was received by me and identified to be in the handwriting of Milton D. Polk, and signed by Milton D. Polk on account of Chapman & Polk.

348 Q. The letter of January 22nd refers to a draft enclosed
338 for $449.15. Did you receive that draft?

A. I did, sir.

The plaintiff offers in evidence the letter of January 26th, 1886, directed to Hon. A. H. Robertson, Baltimore, Md., and signed Milton D. Polk, account Chapman & Polk.

Objected to by all defendants represented, except Chapman & Polk, as incompetent, immaterial, and irrelevant.

A copy of the same is hereto attached, marked Exhibit 8.

349 Q. This letter refers to duplicate tax receipts enclosed. Did you get them in the letter?

A. I think so, sir.

350 Q. Are those the receipts?

A. Those are the receipts referred to in that letter.

(Referring to a number of papers.)

351 Q. Are they in the same condition as when received by you?

A. They are, sir.

The plaintiff offers in evidence tax receipts referred to, No. 445, dated Plattsmouth, Jan. 22nd, 1886, issued to M. D. Polk, receipt for $126.65, covering the property in controversy, signed D. A. Campbell, treas.

Also receipt No. 3544, dated Plattsmouth, May 28th, 1885 or 1886, which seems to be written in, issued to M. D. Polk, on the estate of Ella V. Davis, in the sum of $127.80, covering one to six, block 2, 20 feet of 12, block 29, and one to six, block 89, Plattsmouth; 7 to 12, block 5, and 1 to 6, block 8, White's addition, signed D. A. Kimball, treas.

Also receipt No. 3684, dated Jan. 21, 1886, issued to M. D. Polk, receipting for $33.90, on the west 21 ft. of east half of lot ten, block 28, signed D. A. Kimball, treas.

Also receipt No. 3677, dated Jan. 21, 1886, issued to M. D. Polk, for $31.15, for west 21 ft. of east half of lot ten, block 28, signed D. A. Kimball, treas.

339 The above offers are marked Exhibits 9, 10, 11, and 12.

352 Q. I will call your attention to letter of March 17th, 1886.

A. I identify it, sir, as being in the handwriting of Milton D.

Polk and signed by Milton D. Polk on account of Chapman & Polk.

353 Q. Received by you, was it?

A. Received by me; yes, sir. The memorandum which I find on the back is in my handwriting.

The letter is offered in evidence by the plaintiff.

Objected to by the defendants, all of them excepting Chapman & Polk, that are represented.

The letter is marked Exhibit 13.

354 Q. I will call your attention to a letter of April 3rd, 1886.

A. I identify this, sir, as that of Milton D. Polk and signed Milton D. Polk on account of Chapman & Polk.

355 Q. This letter was received by you?

A. Yes, sir.

The letter above referred to, dated April 3, 1886, addressed to Alexander H. Robertson, Baltimore, Md., and signed Milton D. Polk, account Chapman & Polk, is offered in evidence.

Objected to on behalf of all the defendants represented, except Chapman & Polk, as immaterial, irrelevant, and incompetent.

The same is hereto attached, marked Exhibit 14.

356 Q. Referring to the letter of July 1st, 1886, was that received by you?

A. I identify this as being in the handwriting of Milton D. Polk.

357 Q. Was that received by you?

A. Yes, sir; and signed Milton D. Polk.

The plaintiff offers in evidence the letter of July 1st, 1886, referred to, addressed to Alexander H. Robertson, Esq., Baltimore, Md.; signed Milton D. Polk.

Objected to as immaterial, incompetent, and irrelevant by
340 all the defendants, except Chapman & Polk, that are represented.

A copy of same is hereto attached, marked Exhibit 15.

358 Q. Referring to the letter of September 27th, 1886.

A. I recognize this as being in the handwriting of Milton D. Polk and signed by Milton D. Polk.

359 Q. And received by you?

A. Yes; received by me.

The plaintiff offers the letter in evidence, dated September 27th, 1886, comprising four separate pages, addressed to Hon. Alexander H. Robertson, Baltimore, Md., and signed Milton D. Polk; M. D. Polk.

Objected to by all the defendants represented, except Milton D. Polk, as incompetent, immaterial, and irrelevant.

A copy of same is hereto attached, marked Exhibit 16.

360 Q. Referring to the letter of October 5th, 1886.

A. This is in typewriting, but I recognize the signature thereto as being that of Milton D. Polk.

361 Q. Was the letter received by you?
A. Yes, sir. There is also some writing on the letter I recognize as the handwriting of Milton D. Polk.

The plaintiff offers in evidence the letter of October 5th, 1886, addressed to Hon. Alexander H. Robertson, Baltimore, Md., signed Milton D. Polk.
Objected to by all the defendants represented, except Milton D. Polk, as immaterial, irrelevant, and incompetent.
A copy of the letter is hereto attached, marked Exhibit 17.

362 Q. Look at letter of December 8th, 1886?
A. This I recognize to be in the handwirting of Milton D. Polk.
363 Q. And was received by you?
A. This letter was received by me.

The plaintiff offers the letter dated December 8th, 1886, directed to Hon. Alexander H. Robertson, Baltimore, Md., signed Milton D. Polk, in evidence.
341 Objected to on behalf of all the defendants, except Milton D. Polk, as incompetent, immaterial, and irrelevant.
A copy of the letter is hereto attached, marked Exhibit 18.

364 Q. Look at letter of date February 12th, 1887.
A. I recognize this as in the handwriting of Milton D. Polk and signed M. D. Polk.
365 Q. And received by you?
A. Yes, sir.

The plaintiff offers the letter referred to in evidence, dated February 12th, 1887, directed to A. H. Robertson, Esq., and signed M. D. Polk.

Objected to as immaterial, irrelevant, and incompetent by all the defendants represented except Milton D. Polk.
A copy of the letter is hereto attached, marked Exhibit 19.

366 Q. Referring to the letter of August 14th, 1887.
A. Yes; I recognize this to be in the handwriting of Milton D. Polk, signed Milton D. Polk.
367 Q. And received by you?
A. Yes; this was received by me.

The plaintiff offers in evidence the letter dated August 14th, 1887, directed to Alexander H. Robertson, Esq., Baltimore, Md., and signed Milton D. Polk.
Objected to as immaterial, incompetent, and irrelevant by all the defendants except Milton D. Polk.
A copy of the same is hereto attached, marked Exhibit 20.

368 Q. Look at letter of August 22d, 1887.
A. That is in the handwriting of Milton D. Polk and signed by Milton D. Polk and received by me.

The plaintiff offers in evidence the letter of August 22nd, 1887, directed to Robertson and signed Milton D. Polk.

Objected to by all the parties represented, except Milton D.
342 Polk, as immaterial, irrelevant, and incompetent.

A copy of the letter is hereto attached, marked Exhibit 21.

369 Q. Look at letter of September 6th, 1887.

A. I recognize this as in the handwriting of Milton D. Polk. It was received by me and signed by Milton D. Polk.

The plaintiff offers the letter above referred to in evidence, dated September 6th, 1887, directed to Hon. A. H. Robertson, Baltimore, Md., and signed Milton D. Polk.

Objected to on behalf of all the defendants, except Milton D. Polk, as immaterial, irrelevant, and incompetent.

A copy of same is hereto attached, marked Exhibit 22.

370 Q. Look at letter of March 29th, 1888.

A. I recognize this as being in the handwriting of Milton D. Polk and was received by me.

The plaintiff offers the letter in evidence, dated March 29th, 1888, directed to Alexander H. Robertson, Baltimore, Md., and signed Milton D. Polk.

Objected to by all the defendants, except Milton D. Polk, as incompetent, immaterial, and irrelevant.

A copy of the letter is hereto attached, marked Exhibit 23.

371 Q. Look at letter of July 3rd, 1886.

A. That I recognize to be in the handwriting of Milton D. Polk and signed by Milton D. Polk and received by me.

The letter last referred to, dated July 31st, 1886, and signed by Milton D. Polk, is offered in evidence. Objected to as incompetent, immaterial, and irrelevant.

A copy of the letter is hereto attached, marked Exhibit 24.

372 Q. Look at letter of September 17th, 1888.

A. This is in the handwriting of Milton D. Polk and signed by M. D. Polk and received by me.

The plaintiff offers in evidence the letter of September
343 17th, 1888, directed to Hon. Alexander H. Robertson, Baltimore, Md., and signed by M. D. Polk.

Objected to as incompetent, immaterial, and irrelevant by all the defendants excepting Milton D. Polk.

(A copy of the letter is hereto attached, marked Exhibit 25.)

373 Q. Referring to all of these letters of which you have testified, at what place were they received by you?

A. At my office, in Baltimore, Md.

374 Q. What, if any, communication other than the letters have you had with Messrs. Chapman & Polk or either of them since you left Plattsmouth in October, 1885?

A. There are one or more letters received by me from Milton D. Polk which I have not been able to find.

375 Q. Have you since October, 1885, had any personal connec-

tion with Messrs. Chapman & Polk or either of them until your present visit?

A. I have not seen the gentlemen or either of them at any time or place since I left Plattsmouth in October, 1885.

376 Q. In what way have you had knowledge of the transactions with reference to this estate property other than by correspondence from Chapman & Polk or either of them up to the commencement of this suit?

A. Only by letter received from one M. O'Donohoe.

377 Q. Otherwise your information as to the estate matters has been derived from correspondence with Messrs. Chapman & Polk or one or the other of them?

A. Entirely so, sir.

Here the taking of testimony was adjourned until to-morrow morning at 10 a. m.

OMAHA, NEB., *Aug. 16th*, 1889.

The taking of testimony was continued pursuant to adjournment, the same parties appearing on either side.

Direct examination of ALEXANDER H. ROBERTSON continued
344 by Mr. CLARKSON:

378 Q. You spoke of desiring to have a decree obtained in the district court of Cass county. What was your object regardin- that decree and what were the reasons for it?

A. As I fully explained to Mr. Chapman, and I think also to Mr. Polk, that even if, under the terms of the will of Mrs. Davis, I had the power and discretion to sell the property, yet I preferred that in any event a decree should be regularly entered in the case authorizing me to sell the property. In other words, even if I had a discretion I did not care to exercise that discretion, but preferred that a decree should be passed authorizing the sale of this particular property.

379 Q. What, if anything, was there in the will or any codicil of the will which lead you to wish this?

Objected to as not the best evidence and incompetent.

380 Q. Under the terms of the will and codicils thereto the trustee was authorized to sell such or lease such property as did not yield an income; and although much of this property in Plattsmouth did not yield an income, yet there was some of it that yielded a small return, and I thought it was a matter of very doubtful propriety in me to sell the property under that power, and, independent of that, as I have said, I desired that a decree should be passed, and so instructed Messrs. Chapman & Polk, and our correspondence was based entirely upon the theory and the assumption that a decree would be obtained, and I supposed that a decree had been obtained and that the property was disposed of under that decree until I was informed to the contrary by you gentlemen who now represent me.

All of the defendants represented move that the answer relating to what was contained in the will be stricken from the record
345 as incompetent, the will not being produced.

380 Q. After the deed to O'Donohoe when did you first receive money from Polk?

A. I will have to refer to the correspondence (referring to paper). A letter dated the 17th of December, according to my best recollection, was the first letter that I received in which was said that the property had been sold to O'Donohoe for four thousand dollars, and that letter, if my recollection serves me right, enclosed a deed for me to execute to O'Donohoe, and also enclosed—the letter is dated, as I find by reference to it, December 12, 1885, which enclosed the deed which I was to execute, and also enclose- a mortgage from O'Donohoe and the notes signed by O'Donohoe. I executed the deed that was sent to me as soon as I received it—I think it was the 17th, perhaps, of December, 1885—and returned that deed to Messrs. Chapman & Polk, and I also returned the mortgage which they had sent me, with the request that the same be properly recorded in Plattsmouth, and they were to return to me the mortgage or a certified copy thereof. I did not receive a check or statement from Messrs. Chapman & Polk in reference to the matter until January 22nd, 1886. I refer to the letter of that date, January 22nd, 1886, in which I received a check for $449.15, and that $449.15 was the balance in cash due on the first payment, the balance being made up of fees which were to be made up in the matter, one-half of which I, as the attorney of the estate, was to receive as my compensation and the balance was to go to Chapman & Polk.

381 Q. What, if any, objection did you make to the mortgage in the shape in which it was first transmitted to you?

A. I made no objection to it. I supposed that it was proper, *and* as it had been prepared, as I then supposed, by my paid attorneys.

382 Q. There was something said in one of their letters as to your returning the mortgage in order to enable Polk to affix his seal to it. What is the fact in regard to that?

346 A. That is the fact, that there was a seal; that is my memory, that Mr. Polk asked in his letter that the mortgage be returned, and also notified me in one of his letters that he had omitted in the hurry of the transaction to affix the seal, but wrote me that he had affixed the seal and that the mortgage had been duly recorded at Plattsmouth. I received afterwards what purported to be—it is among the papers that I gave you—a certified copy of the mortgage of O'Donohoe to me as trustee.

383 Q. Between the date that you received the mortgage and the time when you first received the draft for the $449.15 had you sent the mortgage back to Polk or Chapman & Polk?

A. I had.

384 Q. Between what dates, referring to the letter of December 22nd and the letter of December 12, did you transmit the mortgage to Mr. Polk?

A. The mortgage I enclosed in a letter dated the 12th of Decem-

ber, 1885. I returned that mortgage together with the deed which I executed to O'Donahoe, and a few days after the 12th of December, 1885, I received a letter, which I hold in my hand, from Milton D. Polk, under date December 22nd, acknowledging receipt of that mortgage and also of a deed duly executed.

385 Q. Since the return of that mortgage to Messrs. Chapman & Polk have you seen it?

A. I have not seen the original since.

386 Q. At the time you got the original mortgage did you examine it carefully to see whether it complied with the understanding as to the transfer of the property and the mortgageing back of it?

A. I cannot say that I examined it with any care, as I have heretofore said; being an attorney myself, I had supposed that my attorneys were acting in perfect good faith and representing me fully and carefully, and yet I relied upon the statements made by them. The mortgage was proper security to me for the balance of the purchase-money.

347 387 Q. You spoke of receiving a paper which purported to be a certified copy of the mortgage. Is that the paper (referring to a paper)?

A. Yes, sir; I identify this paper of February 18th, 1886, signed by J. M. Robertson or purporting to be signed by J. M. Robertson, clerk, with the seal of, I think, Cass county, Nebraska.

388 Q. Was that received by you from Chapman & Polk through the mail?

A. It was, sir; and I considered it to be the paper to which I was entitled as trustee.

389 Q. Were you familiar with the laws of Nebraska relating to the recording of instruments and relating to the fact as to whether or not they were retained by the recording clerk?

A. I was not; I was entirely ignorant as to what these laws were; I, therefore, relied entirely on Chapman & Polk, whom I regarded as my attorneys.

390 Q. And since you sent the mortgage to them is this paper which we have referred to the only information you have had as to what were the contents of that mortgage?

A. Yes, sir; since, as I say, the original was sent to me, which I returned; and since that I returned that original to Messrs. Chapman & Polk; that is the only paper which I have held as trustee showing what security I had.

The plaintiff offer- in evidence paper of date February 18th, 1886, purporting to be signed by J. M. Robertson, county clerk, and sealed with the seal of Cass county, Nebraska.

Objected to as incompetent, immaterial, and irrelevant *a* on behalf of all defendants represented.

The paper is hereto attached, marked Exhibit 26.

391 Q. When did you first learn that Polk claimed to be the owner of the property in controversy?

348 A. Some time after the matter had been consummated Mr. Polk wrote me in reference to some release of this mortgage—that is, personal release of the mortgage—stating that since O'Donohoe had bought this property and since I deeded it to O'Donohoe that he had become the owner of it, and in the letter which was yesterday filed, I think it was a letter dated in April (referring to letter)—yes, I received a letter, which has already been offered in evidence, dated April 3rd, 1886, signed by Milton D. Polk, in which he wrote me that if I desired the money on the note which fell due in December of 1886, that if I would send it out for collection that he would anticipate the payment of it, and from that time on all my correspondence with Mr. Polk was with reference to the payment of these notes.

392 Q. You say you received a letter in which he stated that he had become the owner of the property. Is that letter in your possession?

A. Not to the best of my knowledge. I have made the most careful and diligent search for that letter, but have been unable to find it; in fact, considering that the matter had been closed by the deed of the property to O'Donohoe and taking of the notes and mortgage, I regard the matter as consummated, and the letters were thrown about my office, and I found these letters that have been produced after a very careful search.

393 Q. After a careful search you have been unable to find that letter?

A. Yes; I have searched and researched.

394 Q. Can you recollect about the date of it?

A. I cannot only say that it was between the last letter which I referred to—that is, the letter—I received a letter at the time that I got that copy of the mortgage of February 18, 1886, or between February 18th, 1886, and the date of that mortgage, the

349 date of the letter which I refer to being in April, 1886. I received such a letter from Mr. Polk, and for the first time knew that he was a purchaser of the property and the purchaser of the property from O'Donohoe and not from me at all. I will say, as a matter of course, if I had for one moment supposed that Polk was the real purchaser of the property I would not have employed him as my agent for the sale of the property to himself.

Objected to the volunteer statement and move that it be stricken out as incompetent and not responsive.

395 Q. Whatever was the date of that letter which you received from Mr. Polk announcing that he had become the owner of the property, was that the first time that you had any knowledge of the fact that he had purchased from O'Donohoe?

A. It was the first time.

396 Q. When did you first learn of any fraud in connection with the sale to O'Donohoe?

Objected to as incompetent, immaterial, and assuming that a

fraud has been practiced upon him, when there is no testimony to show that.

Withdrawn.

397 Q. When did you first learn that the transaction between you and O'Donohoe was not as represented to you ny Messrs. Chapman & Polk?

Objected to as incompetent.

A. The first information that I had upon the subject at all was through a letter purporting to be signed by O'Donohoe, which I received in Baltimore last August, I think.

398 Q. Is that the letter which you received from O'Donohoe?

A. This is the letter, bearing date August 21st, 1888, purporting to be signed by O'Donohoe. I never saw him write and never had any correspondence with him.

The letter referred to is of date June 17th, 1879, and marked Exhibit "A," as previously offered.

350 399 Q. Upon receipt of this letter what, if any, steps did you take towards ascertaining whether or not the representations made in it were true?

A. Upon the receipt of that letter, as soon thereafter—the letter was received promptly, because I was on my summer trip to Niagara falls, and Mr. Kennedy did not receive the letter until some little time after I ought to have received it; but after careful investigation as to who I should employ as my attorneys, taking very great caution in the matter, I sent my partner, William L. Morbern, out here to confer with Congdon, Clarkson & Hunt with reference to that matter, and, upon the representations made to him by my present attorneys, I commenced these proceedings, they having furnished me with a considerable data and all necessary data to convince me that it was my duty as trustee to bring this suit.

400 Q. Referring to the conversation with Mr. Chapman with reference to the Shryock matter, what, if any, knowledge had you at all after the institution of this suit that Shryock had made a quitclaim deed of the east half of lot ten, block 28, to Milton D. Polk?

A. I had no knowledge whatever on that subject. In the conversation and understanding which I had with Messrs. Chapman & Polk was that the Shryock property was to be deeded to me, as trustee of the Davis estate, and was to form a part of this transaction which is now the subject of this investigation. In other words, I was to deed the whole property, including the Shryock property, to the purchaser.

401 Q. What, if any, knowledge had you before the institution of this suit of the fact that there had been a sale of the last-described property through the court proceedings and that a sheriff's deed of the property had issued to Milton D. Polk?

A. I had no knowledge. I had supposed that some proceedings

had been taken in reference to the Shryock matter before I
351 visited Plattsmouth for the foreclosure of the Davis mortgage, and my full understanding was that the whole matter had been foreclosed and settled under the agreement which I signed in Plattsmouth, of which I have heretofore spoken, viz., that the Shryock property was to be conveyed to me in full settlement of all matters against Shryock, and at the same time Shryock was to release me, as trustee, of all claims and demands which he had upon the estate.

402 Q. If the agreement that you signed with reference to the settlement between the estate and Shryock was all dated September 5th, 1885, is it or not a fact that that date does not represent the time at which it was signed by you?

A. I have not the slightest recollection of signing any agreement under date of the 5th of September. The whole matter, according to my very best recollection, and I certainly cannot be mistaken—the whole matter was settled in Plattsmouth when I was there, which, as I have heretofore said, was about the 6th, 7th, or 8th of October, 1885. I recollect well that the whole matter was discussed by my attorneys on one side and the attorney for Shryock on the other, and as a result of that consultation and agreement was prepared which I signed and which was signed in the part of the attorney for Shryock, all of which being done under the advise of Messrs. Chapman & Polk.

403 Q. I do not recollect any further question that I wish to put to the witness and will ask Mr. Robertson if anything occurs to him material to this case that he will now state it.

A. No; I recollect of no matter pertinent to the matter. I can only say that as corroborating what I have said with reference to the matter being entirely and solely between O'Donohoe and myself that the statement which was rendered to me by Polk under date of January 26th—in the statement which he rendered me it was received from O'D., which I regarded as from O'Donohoe, one thou-
sand dollars and their own fee of $200.00 and taxes, $319.50,
352 and the draft of $449.15. My recollection is that there is a receipt for the $400.00, signed by Chapman & Polk. I think I sent it to you. As I say, I asked with reference to these fees, and I will only say it was understood that these fees were to be allowed by the court in the proceedings. I asked especially that that be done, and my recollection of the receipt is that the receipt recites the fact that it was a fee of $400.00 for proceedings had in the district court. I will not speak of the receipt unless it is here.

404 Q. Do you know how long Samuel M. Chapman was the attorney for the estate of Ella V. Davis, deceased, before you succeeded to the trust?

A. I only know of the fact that he was attorney for the estate, because when I took charge of the estate as the successor of William A. Stewart I inquired of Judge Stewart who the agent and attorney of the estate was and was informed by him Samuel M. Chapman, and it was for that reason that I put myself in the hands of Mr. Chapman and found that Polk was his partner by an intro-

duction from Mr. Chapman to Polk. I think I ought to say that under the agreement by which I was to be secured I was to have a mortgage on all of the property which I had deeded to O'Donohoe, and I supposed, in point of fact, that I had such security upon the whole property which I had deeded to O'Donohoe, the agreement being that one thousand dollars in cash should be paid, and that the balance should be secured by a mortgage on the whole property which I sold.

405 Q. Referring to the stipulation in the Shryock case, what have you further to state?

A. My recollection is that it was signed by myself as trustee. I would, however, say that possibly it might have been signed by Chapman & Polk as my attorneys.

353 Cross-examined by Mr. COVELL:

406 Q. In your direct examination you have stated that some time in the spring of 1886, between certain dates given by you, that you received a letter from Milton D. Polk to the effect that he had bought the property which had been deeded by you to O'Donohoe from O'Donohoe. Now what is your recollection as to the date of that letter?

A. As I said before, my recollection is that that date was between correspondence which I had and which has been produced here; between the letter of February 18th, which is the date of the lease, and the letter which has already been offered in evidence as being under date of April, 1886.

407 Q. When did you last see the letter that you received from Mr. Polk containing information to you that he had traded O'Donohoe out of this property or that he had bought the property?

A. I have no recollection of having seen that letter since I received it in the due course of mail in Baltimore.

408 Q. What is your best recollection as to the time that you received that letter?

A. I would say, according to the best of my recollection, some time the last of February or some time in the month of February, 1886.

409 Q. You read this letter all through when you received it?

A. I would certainly say so, sir.

410 Q. State whether or not it referred to any other matters than the matters *than matters* relating to the estate of Ella V. Davis, deceased, and the sale of the property by O'Donohoe to Polk.

A. My recollection is that it was with reference to a release which Polk desired as to a portion of this mortgage. It may have contained some reference to this Harris matter, Chapman & Polk having that in charge at the time, to which we had some correspondence.

354 411 Q. You may state whether or not you recollect that in the letter in which he informed you that he had traded O'Donohoe out of the property deeded by you to O'Donohoe he mentioned some Western lands which he had which he desired you

to sell or trade for him in the East. Please refresh your recollection and state whether or not the letter contained a reference of that kind also.

A. It is possibly so. I cannot speak with any degree of accuracy. I know that Mr. Polk did in the course of his correspondence with me speak of some of the lands which he owned in the West, and requested me to attempt to sell them in the East. I think some reference of that kind is in the correspondence already on file.

412 Q. You may state whether or not the letter which you have reference to as having been received by you from Mr. Polk informing you that he had purchased the property from O'Donohoe, in so far as it relates to the property deeded by you to O'Donohoe formerly belonging to the estate of Ella V. Davis, deceased, contained the following language:

" Hon. Alexander H. Robertson, Baltimore, Md.

My Dear Sir: Your favor of recent date at hand. The note you speak of was duly received by the bank and in their hands for payment. I traded O'Donohoe out of the property and had a note of $800.00 which was due several days ago which I expected to pay in on that note I have assumed the payment of them but the party did not pay promptly as I expected; he says however he will get me the money as soon as he can which will not be long if nothing happens I want to pay them two notes in August."

You may state whether or not this language was contained in the letter received by you from Mr. Polk.

Objected to as improper cross-examination, in that it asks the witness to say whether certain things or statements are contained in an instrument a copy of which is evidently in the hands of the attorney for the other side, and which is the best
355 evidence procurable under the status of this case.

A. According to my best recollection what you have read to me is just about what I received from Mr. Polk. So far as the words " traded out of," which I was struck with at the time, I rather think that that must be about the language of the letter which I have referred to, and also I recollect well that Mr. Polk had written me about anticipating the payment of these notes—that is, paying them before they fell due. The notes were drawn with the right of the maker to pay them before maturity—that is, they were drawn on or before certain dates, and I know the first note was sent on to Plattsmouth before the expiration of the year.

413 Q. You have stated, I believe, that in your direct examination that Mr. Chapman was the attorney for the estate of Ella V. Davis prior to the time that you became trustee?

A. I learned that fact from my predecessor, Judge Stewart.

414 Q. You may state whether or not you have any letters in your possession from Chapman to your predecessor relating to the estate of Ella V. Davis, deceased, which you have not produced in your direct examination.

A. I have not now nor have I ever had any correspondence of Mr. Chapman addressed to my predecessor, Judge Stewart.

415 Q. You may state whether or not you have any letters from Mr. Chapman, signed by Samuel M. Chapman, to yourself, relating to the property belonging to the estate of Ella V. Davis, deceased, which you have not produced in your direct examination.

A. I have no such letter in my possession now, and my recollection was that I had sent Messrs. Congdon, Clarkson & Hunt the letter which was addressed to me by Mr. Chapman previous to my visit to Plattsmouth, but unless those gentlemen have it in their possession of course I must be mistaken; but speaking from recollection I was under the impression I had the letter from Chapman in reference to the affairs of the estate before I went to Plattsmouth.

356 416 Q. If you have in your possession such a letter will you hereafter forward it, that it may be referred to and used in evidence in this case, if you can find it?

A. I will most certainly, and will say that I will make diligent search for such a letter.

417 Q. You may state if you have any recollection as to about the time that you received such a letter, the letter which you think you had received from Mr. Chapman relating to this estate prior to the time that you visited Plattsmouth.

A. I was appointed trustee in Judge Stewart's stead and place in April, 1885, and went to Plattsmouth, as I said, in early October, 1885, so that if there is any such letter it is between those dates, probably; I would say about June or July of 1885.

418 Q. If the stipulation which you have mentioned in your direct testimony should prove to have been sent to you as trustee of the estate, instead of by any attorneys in your employ for the estate, and if it should appear that that stipulation was dated and filed on the 5th day of September, 1885, you may state whether or not that would be the date of your visit at Plattsmouth.

A. I will say this, that I have most distinct recollection that I visited Plattsmouth early in October of 1885, and I refresh my memory in that respect just previous to this present visit by examining my ledger where I keep my accounts as trustee, and there I find an entry in my expense account to Plattsmouth and St. Louis; I also came by way of St. Louis in the matter of the estate dated the 15th day of October; which entry was made immediately upon my return to Baltimore, and my visit to the West occupied about eight or nine days; and I will say further that I came up from Plattsmouth on the evening of the day that I transacted this business with Chapman & Polk at Plattsmouth to Omaha and registered at the Paxton house, and I requested the clerk at the

357 Paxton hotel to furnish me with the date of that register in order that I might speak with perfect accuracy, and the reason that he gave me for not furnishing me with that date on yesterday was that the proprietorship of the hotel has changed hands and that the old books are packed away, and he promised me this morning that he would furnish me with that date possibly

in the course of the day and I promised I would furnish it if such information is given me.

419 Q. Prior to the time when you visited Plattsmouth and about the time when you stated that you met Mr. Chapman and Polk at Plattsmouth had you or not received any statement from Chapman as to the condition of the property belonging to the estate of Ella V. Davis, deceased?

A. As I said before, my recollection is almost distinct on that matter that I did receive that letter—a letter with such a statement, and also at the same time advising me to come to Plattsmouth and see the property, and advising me to dispose of it if a purchaser could be found.

420 Q. Upon your meeting Mr. Chapman or shortly after your meeting him at Plattsmouth you may state whether or not you went with him and looked over and examined each and every piece of property belonging to the estate of Ella V. Davis, deceased, that was afterwards deeded by you to O'Donohoe for the purpose of ascertaining its condition and location and acquaint yourself with the condition and location of the property.

A. As I said in my examination-in-chief, I met Mr. Chapman at about the hour of nine o'clock, I think, in the morning, and at his suggestion and in company with him alone I rode with him and overlooked and examined the outline of the property. I recollect the property very distinctly, which he told me had been occupied by a Government official, which is known, I think, as the surveyor general's property, over on a hill that overlooks the Missouri,
358 and he showed me some property a little nearer the town than that, and I must say that from the condition of the property my judgment was that it ought to be sold, and as to its value I was entirely ignorant and was entirely unable to form any judgment as to its value.

421 Q. You may state whether or not you also looked at some property on Main street, in Plattsmouth, known as the property which Shryock had once occupied and upon which there had formerly been standing a building that had burned down, and also the property that has been mentioned as the Slater property, the first being in lot 10, block 28, Plattsmouth, and the last being in block 29, Plattsmouth.

—. According to my recollection, as to what the property was in I cannot speak. but I recollect those two pieces of property, one of which had been improved, but the improvements had been destroyed by fire, and I was informed another piece of property was situated on Main street—that is, it was on the same street as Chapman's office, which I was told was on Main street, and perhaps the name was Main street; anyhow, I recollect it was occupied by a jeweler by the name of Slater.

422 Q. You may state whether or not you found upon examination, made by you at the time you visited Plattsmouth in company with Mr. Chapman, that any of the property was occupied except the Slater property, and whether or not it was yielding any revenue to the estate.

A. The Slater property was renting for a small amount. I really do not recollect. It was a small amount, and Mr. Chapman told me, and I saw for myself, that some one was living on the property known as the surveyor general's property, but my recollection is that Mr. Chapman told me that he only had these people there to care for the property; that it was not yielding any income with the exception of the Slater property; my impression and recollection is that none of the property was yielding any rent or income,
359 and that was every inducement to me to sell the property, because it was not yielding an income, and that was the question. I will say here that I went and determined myself as to the propriety of selling, viz.: The condition of the property and as to whether it would probably yield an income, a matter on which I wished to inform myself, was the question of whether it could be put in shape so as to yield an income to the estate. That was the question I wanted to determine for myself, and on the question of values I was ignorant and had to have that determined by others.

423 Q. When you visited Plattsmouth you may state whether or not it was with the intention of disposing of the property belonging to the estate of Ella V. Davis, deceased.

A. I went out to Plattsmouth and informed myself, as I have already stated, as to its condition, with respect to its yielding an income to the estate. I went out prepossessed with the idea that the property ought to be sold, and after my examination of the property and its condition my own judgment then was that it ought to be sold, and as I may say in answer further to the question, that I said myself that so far as my own judgment was concerned as to the propriety of disposing of the property, that it ought to be disposed of. I recollect that Mr. Chapman told me that to develop that property, to put it in any shape to yield an income, would require an expenditure of not less than $2,000.00, and as a trustee I did not feel justified in expending that much money upon property so far away from my own care and attention.

424 Q. In your trip around with Mr. Chapman, examining this property, did you or not ascertain that the property had run down at all?

A. The only parcel of it valuable for rental purposes was the Slater lot on Main street occupied as a jewelry store, perhaps. My recollection is that I did not go into the surveyor general's property; I examined it on the outside. My recollection was that it was delapidated and would require a considerable money for repairs.
360 The condition of the Slater property, my recollection is that it was only a one-story building, and I went, as I say, for the very purpose of ascertaining the probabilities of the estate getting an income from the property in its present condition after an outlay of a small amount of money. I recollect Mr. Chapman criticised the manner in which the estate had been managed by Judge Stewart. He said that Judge Stewart was giving so little care to the property. He mentioned that some of the small houses on the lots—I think one or two small buildings on the property—Chapman volunteered to say had been so neglected and abandoned

that the hogs run through them. I know that everything intended to create the impression in my mind that the best thing to do was to dispose of the property.

425 Q. You found on a personal examination of this property that there was none of it that was habitable or capable of producing rents or revenues to the estate, except the Slater property possibly and the surveyor general's property, did you not?

A. That is my recollection, sir. The small house of which I spoke, that was on some of the other property which looked to be a very insignificant improvement and I attached little or no importance to this improvement.

426 Q. After having examined this property or while examining it, did you or not then inquire of Mr. Chapman what the said property could be sold for in cash?

A. I do not recollect asking what it could be sold for in cash. I recollect the matter about which I wanted to see Chapman was as to what that property ought to be sold for. I had no knowledge whatever as to the values, and I left it to Messrs. Chapman & Polk any information that they might get in the matter as to the amount that I should as trustee sell—as to the amount for which the property should be sold. I put myself absolutely and entirely in
361 the hands of Chapman & Polk, having decided for myself the propriety of selling.

427 Q. State whether or not at that time you asked Chapman the value of the whole property upon the market at that time in Plattsmouth.

A. I cannot recollect specifically that; I recollect, of course, talking with Chapman and making inquiries of Mr. Chapman as my representative as to the amount I ought to sell that property for and what it was worth, my desire being to sell it for its full worth, it being my duty to get its full price as trustee.

428 Q. You may state whether or not, in answer to questions put by you to Mr. Chapman as to the value of the property which you looked at as belonging to the estate of Ella V. Davis, deceased, he told you that he was not posted on the value of real estate of that character, and did he not then personally go with and introduce you to real-estate dealers in Plattsmouth that you might inquire of them the values of the several pieces of property and satisfy yourself in that way as to the values of the pieces of property?

Objected to on the ground that the question is not specific enough, in that the witness' attention should be called to the persons to whom, if any, Chapman took him.

429 Q. I have not the slightest recollection of Mr. Chapman telling me that he had no knowledge as to the values of property. He had told me, in the course of the conversation, that he had settled in Plattsmouth; I think he told me soon after the war, he having told me, I think, that he was a colonel in a Pennsylvania regiment, and mentioned the fact, I think, that he was related on one side to the Lees of Virginia, to which I was weak enough to attach a good deal of importance, being a Southern man myself. He told me, I

recollect very well, that real estate had not advanced in values in Plattsmouth; that he had made a mistake in settling in Plattsmouth; that when he settled there that he thought that
362 Plattsmouth was going to be what Omaha now is or was at that time, in 1885, that he had bought his property there himself; that it had enhanced very little in value, and the whole impression made upon my mind of the conversation was that he was familiar, or somewhat, with the values of property in real estate and was pretending to advise me, I think.

It is very probable that Mr. Chapman did speak to one or more persons—whether they were real-estate brokers or not I could not say—as to the values, and, as I said, I do think and recollect that this attorney for Shryock, whatever his name was—I recollect he was a brother-in-law of the cashier of one of the banks, whose name, I think, was Patterson—Mr. Chapman going over this property with his attorny and this attorney there making a memorandum of the property, which, it seems to me, amounted to something like four thousand dollars, and the impression made upon my mind — that it was Mr. Chapman's best judgment that that property should be sold at $4,000.00. Whether it was worth $6,000.00, $8,000.00, or $10,000.00, or $12,000.00 I had not the slightest idea or knowledge.

430 Q. You may state whether or not the attorney for Shryock, to which you have referred as being a brother-in-law of Patterson, the cashier of one of the banks there, was named R. B. Windham, according to the best of your remembrance.

A. I do not recollect the name. I think Mr. Chapman said that he was a shrewd Yankee, which did not impress me as a Southern man with anything very favorable of the gentleman, although I have no prejudice against any people in any section of the country.

431 Q. You may state whether or not Mr. Chapman, at or about the time that you made inquiries of him as to what the value of all this property was upon the market, he took and introduced you to John W. Barns, of Plattsmouth; R. R. Windham, of Plattsmouth, and R. R. Windham & Co., Will. W. Wise, C. H. Parmalee, Dr. John Black, of Plattsmouth, and others, and that you made inquiries of these gentlemen as to the fair market value of this property.

363 A. I recollect very little of the names. Dr. Black's name seems to me I recollect, and I think we saw Dr. Black there on the street, and Mr. Chapman talked to Dr. Black and represented to him that I was out there to ascertain what the value of this property was, and I do not recollect whether either Mr. Black fixed any value or not. I think a considerable part of the conversation with these people was as to the propriety of selling and as to the possibility of there being any rise in the market in real estate in Plattsmouth. I recollect that from all the talk I heard I formed a very bad idea of Plattsmouth, and I thought the real estate here was very dull from all sides. I think that Mr. Parmalee is the gentleman that I referred to in my examination-in-chief as being a man who had been negotiating for the purchase of that property before I got there, and certainly I would have attached very little impor-

tance to any statement as to values to a person who I thought was negotiating for the property. In my experience people that want to buy are people that want to buy at the smallest figu-e.

432 Q. You may state whether or not Dr. Black, whom you recollect as being one of the parties whom Mr. Chapman introduced you, put any value or values upon the property concerning which the conversation was had; and, if so, what the value was that he put upon the property.

A. I do not recollect except in a general way that Dr. Black advised me to sell the property, and, further, my recollection is that he agreed with Mr. Chapman that $4,000.00 was a fair price; whether he made any specific valuations as to the different appraisals I do not recollect. I attached very little importance to that. My desire being to sell the whole I wanted to know what the whole thing amounted to rather than any particular piece.

433 Q. You may state what, if anything, Dr. Black said to you or in your presence at that time in answer to the answers made to him as to the probability of any rise in the values of property in
364 Plattsmouth within a reasonable time.

—. As I say, in a general way my recollection is about what Dr. Black said was that there was very little probability of any rise in values.

434 Q. Have you any recollection whatever as to meeting John W. Barnes there and as to inquiring of him or as to inquiries having been made of him in your presence by Chapman as to what he considered the fair market value of the property belonging to the estate of Ella V. Davis, deceased?

A. I do not recollect the name of Barnes, but very probably a gentleman by that name, along with others, was asked by Mr. Chapman as to the probabilities of there being a rise in the real-estate market in Plattsmouth, and he advised a sale of the property in its then condition.

435 Q. State whether or not you have any recollection whatever of meeting Will. S. Wise, dealer in real estate there at that time, and of an inquiry being made there by yourself or by Samuel N. Chapman in your presence of William S. Wise as to the fair market value of the property belonging to the estate of Ella V. Davis, deceased; and, if so, what was said by Mr. Wise at that time as to the fair market value of that property.

A. I recollect simply the name of Wise, I think, and I think some inquiries were made exactly as I have heretofore said, both as to values and as to the propriety of selling the property of the estate in its then condition, and my recollection is as to all conversations Mr. Chapman had, whom I regarded as my spokesman and my representative and attorney, that the replies to all questions put by Chapman was that the property had better be sold.

436 Q. You may state whether or not you have any recollection of meeting R. B. Windham, who is a son-in-law of the cashier of one of the banks in Plattsmouth, and of Mr. Chapman inquiring of him in your presence what he considered to be the fair market value

of the property belonging to the Ella V. Davis estate, as to the
365 advisability of selling the property, and whether or not there was any probability within a reasonable time of a rise in values of real estate as this was; and, if so, state all that you remember occurring at that time, any such conversation with R. B. Windham.

437 Q. If Windham was the gentleman who was attorney for Shryock, I would say, as I have heretofore said, my recollection is that a conversation took place between Windham and Chapman, I being present, and in which the questions as to the values of the property and the advisability of selling it in its then condition —. Values were put down as to particular pieces of property either by Windham or Chapman, and the sum total of the valuations amounted to something like four thousand dollars.

438 Q. What, if anything, did C. H. Parmalee say to you about this property at the time of your visit at Plattsmouth, and in whose presence did he say what he did say, if he said anything at all?

A. My recollection about Mr. Parmalee is that he was the gentleman who had the idea of buying the property, and I said that my recollection was that I met Mr. Parmalee in the presence of Mr. Chapman—whether in Mr. Chapman's office or on the street in Plattsmouth I do not know—but in answer to any inquiry of Mr. Chapman's as to the valuation of the property, or whether he was willing to buy it, my impression is that he was not willing to buy it for from $3,500.00 to $4.000.00; and my recollection further is, with reference to this Mr. Parmalee, that he declined to say whether he would buy, and that he mentioned that he had made some investments of his money and was not in a good condition to buy at that time. I am speaking with reference to my recollection and, of course, I may be mistaken, but anyhow the result of that was that Mr. Parmalee was not willing to pay over $3,500.00 or $4,000.00 for the property, and he could not at that time even pay that.

366 439 Q. State whether or not you yourself then inquired of each of the parties to whom Mr. Chapman introduced you as being parties who would know the fair market value of the property belonging to that estate what the market value of that property was, and did you not yourself then and there offer it for sale at $4,000.00 as a result of the conversations.

A. As a result of the conversations that I had or that was had for me by Mr. Chapman with the different people that he spoke to the impression made upon my mind was from such conversations that $4,000.00 was a fair value for that property, and that was my duty as trustee, to sell it at that price, and I can further say that I authorized Chapman & Polk to sell it for $4,000.00, and Mr. Polk was to ascertain between the time I left Plattsmouth, which was about half past five on the evening of Saturday evening, and until the train going east, which left Omaha about five o'clock Sunday evening, and was to ascertain if he could find somebody who was willing to pay $4,000.00. As I said before, Mr. Polk met me at the train, as expected, in Plattsmouth, and my recollection is that he told me that he could sell it for $4,000.00.

440 Q. You may state whether or not it is a fact that the best offer that you could get for the property while you were in Plattsmouth was $3,500.00, and that Samuel M. Chapman advised you not to make a sale of the property at that figure.

A. I do not recollect of getting any specific offer at all while I was there, it being decided by Mr. Chapman, as my representative, and also Mr. Polk, whom he introduced to me as his partner, that $4,000.00 was the price that we ought to sell it for. Whether or not anybody offered me $3,500.00 I have not the slightest recollection, and therefore if any such offer was made I have no recollection of such an offer.

441 Q. Is it or not a fact that you would have bargained and sold the property belonging to the estate of Ella V. Davis,
367 deceased, and sold it for $3,500.00 if Samuel M. Chapman had not advised you that such was not enough for the property?

Objected to as calling for testimony as to the condition of the witness' mind four years ago.

A. I will repeat that I have no recollection of the offer of $3,500.00, but I will say further that if I had such an offer and Mr. Chapman advised me not to accept it I certainly would not have accepted it, as I was dependant on the advice of Mr. Chapman and Mr. Polk in the whole matter, and will say further if they had advised me to sell at $3,500.00 I would have sold at $3,500.00.

442 Q. You may state whether or not you have entered into any arrangement with Chapman & Polk by which you employed Chapman or Polk or Chapman & Polk as your agents to sell the property belongin- to the estate of Ella V. Davis; and, if so, what was the terms and conditions and nature of such employment and where was it made?

A. As I say, I went to Plattsmouth to see Messrs. Chapman & Polk or Mr. Chapman on this matter. I did not know the name of a single individual in the city of Plattsmouth except Samuel M. Chapman, and I went there for the purpose of consulting with him as the representative of the estate. I was introduced to Mr. Polk by Mr. Chapman as his partner. Mr. Chapman remarked that he was a shrewd young man who had some knowledge of values himself, and my recollection is that he told me that he was a son of a gentleman who lived in Lincoln, Nebraska, and that his father and the som had both dealt some in property, and I will say that I went there and did, in point of fact, employ Messrs. Chapman & Polk as my representative- to dispose of that property according to their best judgment; that they were my attorneys and the only people in Plattsmouth who were authorized to act for me; that I consulted with them; that I agreed that they should sell the property at $4,000.00 if they could find a purchaser, both of them
368 having adv-sed me that four thousand dollars was the best price at which it could be obtained, and that that was the full value, and, as I say, we not only agreed that four thousand dollars was a fair price, but it was specifically agreed that inasmuch as

I, the trustee of this estate, who at the same time was an attorney-at-law, had come on to Plattsmouth with reference to this business that ten per cent. should be the amount charged on the amount for which the property sold as a fee; that Messrs. Chapman & Polk were to institute proper proceedings in the proper court at Plattsmouth and procure a decree for the sale of that property, and that for such services ten per cent. should be charged, and that amount was to be divided between Chapman & Polk, whom I regarded as my associates and my assistants; that that sum should be equally divided between us.

443 Q. You may state where this arrangement which you have just mentioned was made and in whose presence it occurred and whether or not it was verbally or in writing and everything in relation thereto other than that which you have now stated.

A. I recollect with absolute distinctness that the matter was thoroughly discussed between Messrs. Chapman & Polk and myself in the office of Messrs. Chapman & Polk as if it had happened two months ago; that they said, Now, Mr. Robertson, as to fees in the matter, what is your opinion? and I said, Gentlemen, as you know Baltimore is a long distance from here and it takes some time to come out here and requires some time and attention in this matter by me as an attorney, I am perfectly willing that you gentlemen should take, and I desire you gentlemen to take, the proper proceedings here to procure a decree for the sale of the property, and I think that it will be fair that the amount allowed by the court—I distinctly asked that the fee *be* allowed by the court be divided between us. Mr. Polk said in a very frank, energetic manner that that was perfectly fair and satisfactory, and Mr. Chapman
369 himself acquiesced, and the correspondence shows that that agreement was entirely carried out; that I had not the remotest opinion or idea that Mr. Polk had any idea of being the purchaser of that property, but that I was treating with Mr. Polk in no other capacity than that of attorney or agent or attorney and agent, because I think I would be called to write myself down as an ass if I was to employ a man to negotiate a sale for me who at the same time was the purchaser.

444 Q. You may state at what time in the day, as near as you can bring it to mind, that you employed Mr. Chapman & Polk as your agents to sell this property, and whether or not there was any other person or persons present at the place and at the time when you say you made such employment.

A. I went out to Plattsmouth, as I have said, with the distinct intention of employing Mr. Chapman. I knew nobody else. I saw Mr. Chapman early in the morning, as I have related to you—how we went over the property, how he consulted with other people in my presence as to the values. I regarded Mr. Chapman all the time as my attorney, and the question as to the agreement, that was a mere matter of detail. I regarded Chapman & Polk as my attorneys from the moment I got in Plattsmouth—that is, I regarded Mr. Polk as Mr. Chapman's associate in the matter as soon as I was introduced to him, but as to the details, as to the specific

agreement, as to compensation, that was in the evening before I left for Omaha. After the matter had been discussed at different times during the day, as the result of all the information I could get on the subject, which had been furnished to me by Chapman & Polk, I do not know whether the parties to whom Chapman & Polk introduced me were actual real-estate dealers or who, but as the result of the information that I got during the day I said I was satisfied that the property ought to be sold. Then the question was as to the compensation, and, as I said, there was an agreement,
370 specific, unqualified, and undoubted, that they should institute proceedings and procure a decree, and that the amount of compensation should be ten per cent. on that amount of the purchase.

445 Q. State whether or not anybody was present except yourself.

A. I do not recollect of anybody else being present except Chapman & Polk, but my recollection is that one or two of the people who came into Chapman's office from time to time seemed to be gentlemen in active practice, but as to anybody being witnesses to the agreement in that regard I have no recollection in that regard.

446 Q. You may state whether or not the proceedings for the foreclosure of the Shryock mortgage had been commenced while Mr. Stewart, your predecessor, was trustee for the estate of Ella V. Davis, deceased.

A. My impression is that it had been; that the mortgage was in the course of foreclosure, and that these proceedings had been continued in court or were still pending in court at the time when I visited Plattsmouth. I did not see the proceedings myself. I did not examine the records, but the information I had from Mr. Chapman was that the proceedings were pending.

447 Q. As I understand you, this Shryock mortgage belonged to the estate of Ella V. Davis and was upon that property upon which the building had stood that was destroyed by fire. Is that the fact?

A. Yes; that is the fact as represented to me, and I have no doubt it was the fact.

448 Q. Will you look at that letter and state if you are the writer of it?

A. Yes, sir; that is my handwriting.

449 Q. Was that letter mailed by you to Chapman & Polk?

A. I presume so; I should certainly say that it was.

450 Q. Is it or not a fact that prior to the writing of this letter to Chapman & Polk that you had not determined fully upon
371 the sale of the property at the writing of this letter?

A. I had determined fully, sir, to sell the property when I was in Plattsmouth. The only question was to find a purchaser at $4,000.00.

451 Q. You may state whether or not that letter was written in answer to one introduced by you in evidence in your direct examination of date November 14th, 1885.

A. In all probability it was. That would be just about in due course of mail between the two places.

452 Q. You may examine this letter of date December 17th, 1885, and state whether or not you wrote that letter and whether or not the signature attached thereto is your genuine signature.

A. Yes; that is my handwriting and my signature.

453 Q. Is that letter mailed by you to Chapman & Polk?

A. Yes; I have no doubt of that whatever.

The letter referred to is hereto attached, marked Exhibit 27 for identification.

454 Q. Examine that letter of date February 9th, 1886, and state whether or not you are the writer of that letter and whether the signature attached thereto is your genuine signature.

A. Yes, sir.

455 Q. How have you mailed that letter to the parties to whom it was addressed?

A. Yes, sir; that is the fact.

456 Q. Examine this letter dated February 15th, 1887, and state whether or not you are the writer of the letter and whether or not the signature attached thereto is your genuine signature and whether or not you mailed that letter to M. D. Polk, the party to whom it is addressed.

A. Yes; it is in my handwriting and it is my letter and was mailed to him.

457 Q. Examine that envelope in connection with the letter and state if the address upon the envelope was written by you.

372 A. Yes, sir.

458 Q. State if from its appearance this envelope was the one in which the letter was enclosed.

A. Yes, sir; that is the fact. They are both in my handwriting and contained in an envelope of our firm.

The letter and the envelope are both hereto attached, marked Exhibits 29 and 30 for identification.

459 Q. State whether or not you kept letter-press copies of all the letters that you wrote to Samuel M. Chapman or Chapman & Polk or Polk & Chapman or Milton D. Polk relative to the Davis estate.

A. I did not.

460 Q. Did you keep letter-press copies of any of them?

A. I do not think I did. I think about that time, or there was some time, our office boy was a very bad person in copying press copies, and he blurred them so, I think, we gave it up.

461 Q. You have no way of knowing, then, what you wrote to Samuel M. Chapman of Chapman & Polk or Polk & Chapman or Milton D. Polk or M. D. Polk except the production of the letters?

A. No, sir; except in a general way.

462 Q. Is it or not a fact that the matter of obtaining a license to sell the property, a decree under such license directing the sale of the property of Ella Davis, was left entirely to the judgment of Mr. Chapman as to the necessity thereof at the time that you had the

coversation with Mr. Chapman respecting the obtaining of such a decree?

A. No, sir; my recollection is very clear that my instruction to Chapman & Polk and my understanding with them was that they should take a proper proceeding in the proper court there, giving me proper authority to sell that property. I think that Mr. Chapman said that he had some recollection as to the powers contained in the will from an examination of the will, which was, I
373 think, already of record, as to the power of the trustee to sell, but I so understood, and was of that impression down to the time of this present proceeding, that such decree had been obtained. I may say, and my understanding from the correspondence that passed between Chapman & Polk and myself, that such proceedings had been taken.

463 Q. At the time you executed the deed in December, 1885, to O'Donohoe did you or not know that there had been and was no opportunity by leave of court to obtain any such decree between the time when you were at Plattsmouth, the 5th of October, and, as you say, early in October, 1885, and of the time of the execution of the deed to O'Donohoe?

A. I thought at the time I made that deed that such a decree had been passed. I knew nothing about the terms of court at Plattsmouth, but I think after the deed had been made I had some correspondence with Chapman & Polk, and I think the correspondence will show that I thought the promise that had been agreed to be done in the first instance should certainly be carried out.

464 Q. Is there any other correspondence relating to that than that introduced in evidence?

A. No. I think the correspondence already filed will verify the statement made; but I will say this: that looking back at the transaction of this deed that I am strongly of the impression that at the time I signed that deed that I thought the proceedings had all been taken.

Redirect examination.

By Mr. CLARKSON:

465 Q. Who had been collecting the rents of the estate property before you visited Plattsmouth?

A. I think the rents had been paid to one of the banks there by the tenants. I think there was a sum on deposit in one of the banks, of which I think Mr. Patterson was cashier, because I have some recollection of being introduced to Mr. Patterson with refer-
374 ence to that deposit, and I authorized Mr. Polk in some paper that you furnished me a moment ago to collect the rents that were on deposit there.

466 Q. You spoke this morning of a Dr. Black, whom you think you had met while in Plattsmouth. Have you since the adjournment this morning met Dr. Black?

A. I have been introduced to a gentleman by the name of Dr.

Black, of Plattsmouth, both by yourself and Mr. Clark, since the adjournment.

467 Q. Was the gentleman whom you met during the adjournment the gentleman whom you thought you had seen as Dr. Black?

A. He is not. I never saw the gentleman before in my life to whom I was introduced to-day as Dr. Black. My recollection at the time I was examined this morning — that I went to Dr. Black's office with Mr. Chapman. My impression was that I met a man low of statute—a large man—whom I thought was Dr. Black. That was my recollection of the man, but the gentleman whom I saw to-day was not the gentleman that I had in my mind when I testified this morning; two people could not be much more unlike.

468 Q. Do you remember the appearance of Mr. Patterson?

A. Mr. Patterson, my recollection —, was a gentleman of low statute, florid complexion, small moustache. I have never seen the gentleman since, and am speaking as to the impressions. That is the impression that is on my mind. I think I recollect the face of the gentleman that acted as attorney for Shryock; my recollection is that he was a gentleman with a full suit of whiskers—not long, but full.

469 Q. Referring to the letters introduced by you in evidence, were the signatures to the various letters made by the persons by whom they purport to be made?

A. They were in the handwriting of the persons by whom they were written.

470 Q. Whose were the signatures of the letters?

375 A. All the letters that I received were the signatures of Mr. Polk, with the exception of one letter which was written by Mr. Chapman.

Copies of all the letters introduced by the plaintiff are hereto attached, marked exhibits in the order in which they were introduced.

The plaintiff hereby gives notice to defendant Polk and his attorney, Mr. Covell, that the plaintiff will require the production by Chapman & Polk, or one of them, of the original mortgage given by O'Donohoe to the plaintiff and forward for the attaching to this testimony.

471. Mr. COVELL: I hereby give notice that if it comes into my possession or in the possession of either Chapman & Polk it shall be produced.

The WITNESS: I received the deed which I was to execute, conveying this Plattsmouth property to O'Donohoe, in the same letter or package that I received the deed—in the same package that this mortgage, and, of course, examined it to the extent, as I thought, of finding that the mortgage covered the same property which I was to convey to O'Donohoe. I returned the two papers at the same time, excepting, of course, that they would be recorded at the same time.

It is agreed by and between the parties that where Dr. John

Black is referred to in the testimony of this witness that it should be Dr. George Black instead of John Black.

Here the taking of testimony was adjourned until September 17th, 1889, in Plattsmouth, at the same place as the testimony was heretofore taken there.

Later it was agreed that the time of taking the testimony should be at the same place, on the 19th of September, 1889.

The signature of this witness to this deposition was waived by all parties.

376 *Congdon's Talk with O'Donohoe.*

3 o'clock p. m., in the office of Congdon, Clarkson & Hunt, in the First National bank building (in the library room of office), on Wednesday, October 17th, 1888.

O'Donohoe came in alone and said that he officed in Plattsmouth near Chapman & Polk, and that Polk came to him and offered him two hundred dollars—one hundred for himself and one hundred for his old woman—to engage in the transaction that follows: Polk was to cause the property to be deeded to O'Donohoe; one thousand dollars was to be paid down by Polk, and O'Donohoe was to give a mortgage back on the property securing three one-thousand-dollar notes which were made by O'Donohoe. O'Donohoe on the same day deeded back all the property to Polk. Just prior to the making of the mortgage O'Donohoe explained the whole thing to his wife, telling her that he was to have $100.00 and she $100.00, and that there would probably be trouble about it hereafter, and that she told O'Donohoe that Polk would never give him the $200.00, and he at the same time said to her, "He has got to give it to me because I hold a club over him." Finally, one of these notes came due and was sent to the bank at Plattsmouth. O'Donohoe notified Polk and Polk paid the note, and O'Donohoe then told Polk that he must have the balance of the $200.00. Polk always claimed to be hard up and would not give him any money; so O'Donohoe then wrote to Robertson, telling him all about the transaction.

EXHIBIT 2.

PLATTSMOUTH, NEB., *Oct. 22nd,* '85.

MY DEAR SIR: We have been canvassing the sale of the realty belonging to the Davis estate, and $4,000.00 is the best offer we can get—$1,000.00 down and the balance when deed is made and confirmed by court. I have prepared petition to sell and will
377 take first order next week. If a sale of this property is consummated, it should be done before winter sets in, as you cannot then, in all probability, get a fair offer before matters open up next spring. Looking this property over, I am, as you well know, very firmly convinced that you should sell it now, as a long, hard

winter will, in the condition it now is, unquestionably reduce it in value.

Very truly yours, SAM'L N. CHAPMAN.

To A. H. Robertson, Esq., executor estate of Ella V. Davis, 41 Lexington street, Baltimore, Md.

Exhibit 2.
August 15th, 1889.

EXHIBIT 3.

PLATTSMOUTH, NEB., *Nov.* 14*th*, 1885.

A. H. Robertson, Esq, Baltimore, Md.

MY DEAR SIR: A man here by the name of Donohoe says he will give $4,000.00 for that property—$1,000.00 cash, balance in three equal annual payments, at 7%, secured by mortgage on that, together with mortgage on other property, so that the security will be ample.

Not long ago he offered $4,000.00 cash, but times are dull here now, and he says the time-payment offer is the best he will do. If the above is satisfactory to you, you can advise us and we will arrange the matter to close up the trade with him as soon as possible, as money matters are getting close here, with no flattering prospect of better times soon. We are yours to command. The above is the best we have been able to do thus far, but if not satisfactory let us hear from you at your convenience.

Very truly yours, CHAPMAN & POLK,
Per P.

Exhibit "3."
August 15th, 1889.

378 EXHIBIT 4.

PLATTSMOUTH, NEB., *Nov.* 28*th*, 1885.

Hon. A. H. Robertson, Baltimore, Md.

MY DEAR SIR: I just arrived home from a ten days' trip in eastern Indiana, and Mr. Chapman has been attending court in an adjoining county. These are the reasons we have not promptly attended to this matter.

However, I will fix up the papers and remit them to you Monday.

Yours very truly, MILTON D. POLK,
Apc. Chapman & Polk.

Exhibit 4.
August 15, 1889.

EXHIBIT 5.

PLATTSMOUTH, NEB., *Dec.* 12*th*, 1885.

A. H. Robertson, Esq., Baltimore, Md.

MY DEAR SIR: Enclosed please find blank deed mortgage and notes of O'Donohoe's. He did not like to give his notes before he

got his deed, but finally he signed everything up in proper shape. Now, there are some taxes due and payable against the property, and I agreed with him that when he paid the $1,000.00 (on the receipt of his deed) we would accept tax receipts for those taxes in lieu of the amount of taxes in currency. Court is in session, and we expected to have had a decree before this, but have not; no doubt will have by time deed reaches us. Money matters are very close here. Corn is worth 18 cents and wheat 40 to 50. Farmers get nothing for what they raise, though crops are bounteous.

You can send us deed and we will collect and remit to you, or if you do not know us well enough to be satisfied and do not care to enquire of any bank in this city, you can send deed to First Nat. bank with full instructions.

If you wish to enquire, address Citizens' bank, Bank of
379 Cass County, or First Na. bank.

Yours very truly, CHAPMAN & POLK,
By POLK.

Donohoe claimed he might want to pay off those notes next fall and would not sign unless they were made so he could pay them if he chose to do so. I did not think it would make any difference with you.

CHAPMAN & POLK.

Exhibit 5.
August 15th, 1889.

EXHIBIT 6.

PLATTSMOUTH, NEB., *Dec. 22nd*, 1885.

Hon. A. H. Robertson, Baltimore, Md.

MY DEAR SIR: Yours of recent date at hand, with deed duly executed and mtg., which I forgot to seal in my hurry to get it off on the mail. I have sealed the same and will place on record as soon as we get decree and O'Donohoe pays in the money. I will write you an especial letter or voucher for your settlement with the court at Baltimore and will have the record here about fee as you suggested.

Will write you again the last of the week.

Yours very truly, MILTON D. POLK,
Apc. Chapman & Polk.

Exhibit 6.
August 15th, 1889.

EXHIBIT 7.

PLATTSMOUTH, NEB., *Jan. 22nd*, 1886.

Hon. Alex. H. Robertson, Baltimore, Maryland.

MY DEAR SIR: Enclosed find draft for $449.15. I reserved our fee of $200.00 out of the $1,000.00, together with the taxes. I find that there is also some fees and costs in the Shryock lot-foreclosure matter. I will ascertain the amount and send you an especial and carefully prepared statement to use in your settlement with the

court at your city. I am willing to pay the additional fee out of our $200.00, but the estate should pay the costs.

380 In receipting this be sure to give me the names of all the present heirs, that they may be entered in the decree. Money matters have never been any closer here than they are at present time. I filed papers as requested, and soon as recorded will send to you.

Yours very truly, MILTON D. POLK.

Would have written sooner, but we have been snowbound here. I send check with exchange instead of draft; too late to get in the bank, and wish to send at once.

I will send complete statement in a day or two, with duplicate tax receipts, together with what money is in bank here belonging to you.

POLK.

Exhibit 7.
August 15th, 1889.

EXHIBIT 8.

PLATTSMOUTH, NEB., *Jan. 26th*, 1886.

Hon. A. H. Robertson, Baltimore, Md.

MY DEAR SIR: Enclosed please find duplicate tax receipts for taxes which I have paid.

The estate was also liable for taxes for some sidewalk and improvements that by agreement you avoid.

There is considerable here in banks and due from renters that I can send you if you send order to have it paid over.

The enclosed receipt is prepared as you suggested, that you may get fair pay for your own services.

The money due you from renters here will be hard to get, as, owing to the condition of the buildings, a very poor class of tenants are occupying the property.

Yours very truly, MILTON D. POLK.

381 P. S.—I inclosed the tax receipts, which are copies of originals, but are all signed by the treasurer himself. I mentioned the matter of taxes to you in a former letter. A warranty deed from you, of course, warranted against taxes charged against the property.

I had no idea in making the agreement with the party that the taxes amounted to over $100.00, and now I find the taxes for 1884, for a part of the property, amounting to $114.00, is not paid yet. The Co. treasurer was asked to make out receipts for all taxes due, which I supposed had been done until I went to get duplicate to send you. I find there was an error inmy acc't, caused by paying some other taxes at the same time, so that there is still in my hands $31.35.

Rec'd from O'D		1,000
Paid fee	200	
" taxes	319 50	
Remitted	449 15	
	968 65	
		1,000

Now, shall I remit you the balance due or shall I apply it on taxes? The bal. on taxes will have to stand until note is due and be deducted from that, I suppose. I think from the way things have been running that a sale at $3,000.00 would have been profitable for the estate.

Hoping the above may be satisfactory, I remain,

Yours very truly, MILTON D. POLK,
Apc. Chapman & Polk.

Exhibit 8.
August 15th, 1889.

EXHIBIT 9.

$126.65. No. 445.

TREASURER'S OFFICE, CASS COUNTY, NEBRASKA,
PLATTSMOUTH, *Jan.* 22, 1888.

Received of M. D. Polk one hundred twenty-six and $\frac{65}{100}$ dollars, in full of taxes on the following-described property for the
382 year 1885:

Description of property or name of town.	Lot.	Bl'k.	Value.	Total tax.
Plattsmouth: W. 21 ft. E.	10	28	450	22 92
1, 2, 3, 4, 5, and	6	2	750	38 23
West 20 ft.	12	29	575	29 32
1, 2, 3, 4, 5, and	6	89	150	7 64
White's add.: 7, 8, 9, 10, 11, and	12	5	500	25 48
White's add.: 1, 2, 3, 4, 5, and	6	8	60	3 06
				126 65

D. A. CAMOBELL, *Treasurer*,
By —— ——, *Deputy.*

EXHIBIT 10.

$125.80. No. 3544.

TREASURER'S OFFICE, CASS COUNTY, NEBRASKA,
PLATTSMOUTH, *May 28th*, 1885.

Received of estate of Ella V. Davis one hundred and twenty-seven and $\frac{80}{100}$ dollars, in full of taxes on the following-described property for the year 1883:

Description of property or name of town.	Lot.	Bl'k.	Value.	Total tax.	Int.	Grand total.
Plattsmouth: 1, 26	6	2	750	43 39		
" 20 ft	12	29	500	28 93		
" 1 to	6	89	120	6 94		
White's add.: 7 to	12	5	500	28 92		
" 1 to	6	8	125	7 23		
				115 41	12 39	127 80

D. A. CAMPBELL, *Treasurer*,
By —— ——, *Deputy*.

EXHIBIT 11.

$33.90. No. 3684.

TREASURER'S OFFICE, CASS COUNTY, NEBRASKA,
PLATTSMOUTH, *Jan.* 21, 1886.

Received of M. D. Polk thirty-three and $\frac{90}{100}$ dollars, in full of taxes on the following-described property for the year 1883:

383 Description of property or name of town.	Lot.	Bl'k.	Value.	Total tax.	Int.	Grand total.
Plattsmouth: W. 21 ft., E. ½ of	10	28	500	28 92	4 85	33 90

D. A. CAMPBELL, *Treasurer*,
By —— ——, *Deputy*.

EXHIBIT 12–9.

$31.15. No. 3677.

TREASURER'S OFFICE, CASS COUNTY, NEBRASKA,
PLATTSMOUTH, *Jan. 21st*, 1886.

Received of M. D. Polk thirty-one and $\frac{15}{100}$ dollars, in full of taxes on the following-described property for the year 1884:

Description of property or name of town.	Lot.	Bl'k.	Value.	Total tax.	Penalty.	Int.	Grand total.
Plattsmouth: W. 21 ft. of E. ½	10	28	500	28 12	20	2 83	31 15

D. A. CAMPBELL, *Treasurer*,
By —— ——, *Deputy*.

EXHIBIT 13.

PLATTSMOUTH, NEB., *M'ch 17th*, 1886.

Hon. Alex. H. Robertson, Baltimore, Md.

MY DEAR SIR: I have been sick and neglected to attend to your request as I should have done. Enclosed I send you a statement of amount in bank here, and you can simply draw on them for it. The other tenants, without one exception, have not paid a dollar. I have two of them working for me, though, and will see to it that
384 their wages goes to you on the rent business. I gave them the work with that understanding. You did not say what I should do with the $35.00 I hold of your money. As I can learn—we have but three terms of court per yr.—at an early day what costs will be in Shryock case, I will wait, unless advised to remit.

Yours very truly, MILTON D. POLK,
Apc. Chapman and Polk.

EXHIBIT 14.

PLATTSMOUTH, NEB., *April 3rd*, 1886.

Hon. Alex. H. Robertson, Baltimore, Md.

MY DEAR SIR: If you would like the money on the note which falls due first send it to Citizens' Bank of Plattsmouth for payment at an early date.

The snow is nearly a foot deep and business is greatly retarded by the bad roads and the inclement weather. I have written you twice, but have received as yet no reply.

Yours very truly, MILTON D. POLK,
Apc. Chapman & Polk.

Exhibit 14.
August 15th, 1889.

EXHIBIT 15.

PLATTSMOUTH, *July 1st*, 1886.

Alex. H. Robertson, Esq., Baltimore, Md.

MY DEAR SIR: Enclosed find check for $100.00 and release on three of those lots in north part of town. The lots are not of much value owing to the surroundings, but I have sold them conditionally to a party who will put up a good house and thereby increase the value of the other property near by.

I have improved the property to the amount of over a thousand dollars, so that your security is better than it was. I cannot dispose of this, of course, until it is released. I have not seen
385 the party I hold a note against with which I expect to take up O'Donohoe's $1,000.00 note for several days. However, I will soon have money for some land sales that will let me out. By the way, if you will release that for me you may so telegraph me on receipt of this letter at my expense, as I have agreed to give my man a definite answer next Tuesday and have neglected

writing until it will be impossible for mail to reach here by that time.

Yours very truly, MILTON D. POLK.

I use our printed form of release; any form will do so it is acknowledged.

The lots, you remember, are in diagram, White's addition, original plat of city.

EXHIBIT 16.

LINCOLN, NEB., *Sept. 27th*, 1886.

Hon. Alex. H. Robertson, Baltimore, Maryland.

FRIEND ROBERTSON: Your kind favor received some time ago, and should have been answered ere this.

I enclose you a sectional map of a part of Cheyenne county, with my section marked. The land is smooth, every foot til-able, the soil is rich and of good depth, at $4.75 per acre. There would be due the railroad company $2.47½ per acre, which can be paid in cash or be allowed to run 7 years at 6%. This would leave $2.27½ coming to me. If you could make sale in two or three weeks I will pay you a cash commission of $1,000.00. The land is choice in every particular.

In regard to another matter. Mr. Hyers says he has a lot described as lot number 17, p't of southeast of southwest of section eighteen, township No. 12 N., range 14 east, 6th P. M., in this county, and — which Ella V. Davis holds a mortgage, which, with interest, he says amounts to $260.00. It is past due, and he
386 wants to pay it. There seems to be something irregular about it. I have not yet examined the record. I will do so, and may be able to tell exactly from it what is your due.

I have sent you a release and left the amount to be filled in by yourself. If from your papers you cannot tell what is your due execute it in blank and I will figure from the records here, and if there is more than $260.00 due (as I believe there is) I will make him pay it and fill in the correct amount in the release.

I also enclose a release for three of those other lots. I have placed $150.00 as consideration if I make the trade, as I am thinking of now. I will send you $200.00 if I do not make it at all. I will return you the release. The lots, as you will remember, are those brushy ones in the north part of town.

I had intended taking up first note long before this, but I can't collect, as I had every reason to believe I could, and have been very much disappointed thereby. I trust before very long to clean up. I can get the money at the bank any day, but I would have to pay 10 % for it.

Hoping to hear from you soon, I remain,

Yours very truly, MILTON D. POLK.

I am here looking after Mr. Chapman's interests. We expect to nominate him Wednesday for district judge. If I were at hand I would send check for $150.00; as it is I will await your reply.

M. D. POLK.

EXHIBIT 17.

PLATTSMOUTH, NEB., *Oct. 5th*, 1886.

Hon. Alex. H. Robertson, Baltimore, Maryland.

DEAR SIR: Your kind favor of the 1st inst., enclosing releases, at hand.

I find on examining the record that lot No. 17, containing
387 one acre, was mortgaged by R. W. Hyers and wife May 9th, 1879, to Ella Davis for $600.00, divided in two notes, which notes both fell due one year from date, which would be May 9th, 1880. There was a third note, called an interest note, of $60.00, payable May 9th, 1880, which is the only thing we have to show what interest the $600.00 mortgage drew. From this $60.00 note it must have drawn 10 %.

Now, Mr. Hyers claims there is only $230.00 due the estate. Now, if you have any possible way of finding out the facts in regard to it and will advise me soon, I will hold this release until I hear from you again, as it looks to me as if there was more than $230.00 due you—that is, judging from what Mr. Hyers says about it. He seems to lump it off at $230.00 and not by figures. I think it ought to be attended to at once, as it may be outlawed in time. It is certainly close to the limit (5 yrs. on notes).

In regard to the other release, I have not yet closed my matter out; will hold it also until I hear from you, when, if I am not able to close the matter out, I will return it. Hoping to hear from you soon, I am,

Yours very truly, MILTON D. POLK.

P. S.—Mr. Chapman received the nomination for district judge, and I think there is no question of his election.

EXHIBIT 18.

PLATTSMOUTH, NEB., *Dec. 8th*, 1886.

Hon. Alex. H. Robertson, Baltimore, Md.

MY DEAR SIR: Enclosed please find release, which I return to you, as I was unable to turn the lots over. If you will hold the release I may want to take it up later. Hyers says he will hunt his
388 receipts and let me see them, but he fails to do so. I wish you would write me an urgent letter that I can show him, insisting on his immediately making a payment on that m'tg'e.

I will give you $10.00 for an extension of that note to Jan. 13th. Please let me know about it by return mail, as I am still "land poor," and would besides appreciate the favor.

Hastily, MILTON D. POLK.

P. S.—I still hold the Hyers release entrusted to me, but if we do not get the matter closed up soon I will return it to you also.

EXHIBIT 19.

PLATTSMOUTH, NEB., *Feb'y 12th*, 1887.

DEAR FRIEND ROBERTSON: I fear I have overtaxed you patience with my note matter. Enclosed I send you check for $300.00, with exchange to apply on note; will send you more after a few days. I have been awfully pressed for money, owing to my holding too much property, which I hate to sell at a sacrifice. Thanking you most sincerely for your kind favors, I remain,

Yours very truly, M. D. POLK.

P. S.—Your man Hyers has been appointed warden of penitentiary, and says he will pay up soon.

EXHIBIT 20.

PLATTSMOUTH, NEB., *August 14th*, 1887.

Alex. H. Roberteon, Baltimore, Md.

DEAR FRIEND ROBERTSON: I have been sick and have been out West recuperating my health, but am back to business again, and will now try and straighten up our matters. I enclose you
389 a check for $400, also that Hyers mortgage release. Unless you order me to bring suit at once and foreclose the mortgage, I think the matter would be put off until it would outlaw. I have an opportunity to sell that 20 feet on Main street to good advantage. I enclose a blank release. If you will be kind enough to execute before a notary public, I will on its receipt, if I am able to make the deal, send you the amount of another note; if not, I will return you the release. I hope my delays have not annoyed you. I will make interest and everything satisfactory.

Hoping to hear from you at once, I remain yours, very truly,

MILTON D. POLK.

EXHIBIT 21.

PLATTSMOUTH, NEB., *Aug. 22nd*, 1887.

DEAR MR. ROBERTSON: I received your letter last evening and will file petition to-day in foreclosure. I was disappointed some in noting the fact that you had misunderstood my letter. There is right now over $2,000.00 due you or coming due. My proposition was to take up or partially take up a $1,000.00 note not yet due, which would leave about $1,000.00 coming to the estate, secured by property that has cost me, with the new buildings and other improvements, over $4,000.00. If I could not sell the lot in question I would return you the release and pay you for your trouble. The party wanting it will not wait long. So if you will send release I wish you would wire me to that effect half rate at my expense. I do not want you placed in a position that would in the least make you subject to criticism. $1,000 is exactly what we rec-oned the

property at when it was sold, though it is worth more now, having increased the same as other property all over the city.

Hoping to hear from you soon, I remain yours, very truly,

MILTON D. POLK.

390 I have built two good houses on property which of course adds to its value.

Exhibit 21.

August 15th, 1889.

EXHIBIT 22.

PLATTSMOUTH, NEB., *Sep.* 6, 1887.

Hon. A. H. Robertson, Baltimore, Md.

FRIEND ROBERTSON: Your kind favor with release enclosed came duly to hand. My man has been compelled to wait for his money. I gave him 30 days. If he does not get it in that time I will return the release and $10.00 to pay you for your trouble in making it out. I will send you 2 or 300 dollars this week anyway.

Yours very truly, MILTON D. POLK.

Exhibit 22.

EXHIBIT 23.

PLATTSMOUTH, NEB., *March 29th*, 1888.

Hon. Alex. H. Robertson, Baltimore, Md.

FRIEND ROBERTSON: Your favor of the 17th inst. at hand. I think I can send the amount you speak of in April without any trouble. The residence property I got of you, with vacant lots, &c., do not pay four per cent. on the investment on value of the lots. I wish you would accept a mortgage for the balance I owe you *you* after I make April payment upon a business room here I own, which brings $720 *dollars* per year and is worth six thousand dollars. I would then sell or trade off the property from which I derive practically no income. You would have better security than you now have, though that I know is unnecessary. I would be willing to put it all in one note at 8 per cent. and make it
391 all due one year from April or May 1st, 1888; that would be an extension of time on the debt, but it is at an increased rate of interest, as you see. Please let me hear from you at once and greatly oblige,

Yours very truly, MILTON D. POLK.

P. S.—Your mortgage matter looks as though we might get the money out of it very soon. Under the law it takes over a year to foreclose a real-estate mortgage here, but Hyers is warden of the penitentiary and says he will pay the first of May.

EXHIBIT 24.

OMAHA, NEB., *July* 31, 1886.

Hon. A. H. Robertson, Baltimore, Maryland.

MY DEAR SIR: Pardon my delay in acknowledging your kind favor, with release, &c. I closed up the sale with the party, and he is now building a very neat residence.

The land I wrote to you about is on the table land north of Sidney, Cheyenne county, Nebr., and, I think, is very choice. It is at present 16 miles from Union Pacific railroad. The land is not only smooth and nice, but the soil is very rich and productive, as any one will see by inspecting it. I have some deals on hand here, and if you find a party that you think might purchase or intends coming out this way, if you will advise me by wire at my expense I will meet them at Omaha and go out and show them what I have. It is valuable property to hold beyond question, but I have too much. I paid $2.75 per acre two y'rs ago, and it is selling now at from $5.00 to $7.00.

Hoping to hear from you, I remain,

Yours very truly, MILTON D. POLK.

392 EXHIBIT 25.

PLATTSMOUTH, NEB., *Sept. 17th*, 1888.

Hon. Alex. H. Robertson, Baltimore, Md.

FRIEND ROBERTSON: If you will come out on or about Oct. 10th I will pay your railroad fare and we will close our matters all up except that Hyers mortgage, and if you were here personally I think that could be arranged. It is important that you should come on account of that mortgage, the note, you know, being lost. I could then pay up and get a clean deed. Hoping to see you at that time, I remain,

Yours, &c., M. D. POLK.

EXHIBIT 26.

PLATTSMOUTH, NEB., *Feb'y* 18, 1886.

Mortgage of M. O'Donohoe and wife to A. H. Robertson, trustee, &c., filed Jan'y 28th, 1886, on the following: 20 of L. 12, B. 29, plot E; ½ L. 10, B. 28; L-. 1, 2, 3, 4, 5, 6, B. 2; L-. 1, 2, 3, 4, 5, 6, B. 89, Platts. City, and L-. 7, 8, 9, 10, 11, 12, bl'k 5, White's add.; L-. 1, 2, 3, 4, 5, 6, B. 8, White's add.

J. M. ROBINSON, *Co. Clerk.*

I hereby certify that, in accordance with the stipulation and agreement of the parties hereto annexed, I attended at the taking of the depositions of Byron G. Clark, William S. Wise, William Showalter, and Perry Walker, foregoing witnesses, at the office of Byron G. Clark, in the city of Plattsmouth, Cass county, Nebraska,

at the various times mentioned in the said depositions, and that the said witnesses were duly sworn by a notary public to tell the truth, the whole truth, and nothing but the truth, and that the said testimony of the said witness was by me taken in short-hand and was by me reduced to writing, and that the above and foregoing is a true and correct copy of my short-hand notes of the testi-
393 mony of the said witnesses, whose signatures to said depositions were waived by the parties hereto.

Dated at Omaha, Nebraska, this 27th day of November, 1889.

H. M. WARING.

Certificate.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Chas. A. Potter, examiner in chancery, duly appointed by the circuit court of the United States for the district of Nebraska in the eighth circuit, do hereby certify that the several days named in the depositions hereto annexed I was attended at my office named in this annexed notice in the city of Omaha, by the counsel and witnesses aforesaid; that the said witnesses were duly sworn and examined and the depositions were reduced to writing and the reading of them to the witnesses and their signatures to same was waived by all parties and by — subscribed in my presence.

C. A. POTTER,
Examiner in Chancery.

Fees.

Depositions, 615 folios, at 20 cents per folio, for pl'ff.....	$123 00
Swearing 13 witnesses, at 10 cents " "	1 30
26 exhibits, at 10 cents each " "	2 60
	126 90
To 615 folios of copies to each party, at 10c. per folios for each copy.....	123 00
	$249 90

Upon the back of said depositions appear endorsements in words and figures following, to wit: No. 257, M. Rec'd May 12, '90, and opened by order of court July 10, '90. Elmer D. Frank, clerk.

394 Thereupon, afterwards, to wit, on the 29th day of July, 1890, memorandum of the court was filed in said case; which said memorandum is in words and figures following, to wit:

In the Circuit Court of the U. S. for the District of Neb.

ALEX. H. ROBERTSON
vs.
SAM'L M. CHAPMAN *et al.*

Order for Decree.

This suit is brought to set aside a conveyance for several town lots in the city of Plattsmouth heretofore made by the plaintiff. Mr. Polk, one of the defendants, is now the principal owner of the lots. The conveyance is attacked on the ground of fraud, claimed to have been practiced on the plaintiff by Chapman & Polk, a recent law firm located in said city. To establish the claim of fraud the plaintiff relies much on the inadequacy of consideration. The plaintiff's interest in lots sold for $4,000.

A number of witnesses living at the place, who claimed to know the value of lots there at the time of the sale, fixed their value at from $5,600 to over $8,000. An equal or larger number, having the same facilities for reliable information, fixed the value from $3,500 to $4,500. The testimony of one set of these witnesses seems to me to be quite as reliable as that of the other set.

So far, then, as this testimony is concerned, I can see no force in it in the way of establishing the claim of fraud.

Even of the property was worth $8,000, as the plaintiff claims, it would not establish the charge of fraud, because the plaintiff was on the ground, looked the property over, and consulted several real-estate agents with reference to the value, etc., and there is no testimony that satisfactorily shows that either Chapman or Polk
395 did any improper thing in fixing on the value of the lots. I apprehend that no real-estate purchasers propose to pay full value for lots at the time of purchase, either in Plattsmouth or any other place. If there is no margin, no room for speculation, in a purchase, purchasers will not be numerous, however desirable the property may be. These lots have rapidly increased in value, and that fact, in connection with a mischievous letter of one O'Donohoe, accounts, in a great measure, as I think, for the bringing of this suit. Outside of O'Donohoe's operations there is nothing on which the plaintiff can rely to support his case. O'Donohoe has stultified himself so completely that no reliance ought to be placed on anything he has done or said in connection with the matter.

It looks to me, all things considered, as though this O'Donohoe has been trying to overreach both parties to the suit. At all events his testimony is decidedly against the plaintiff who called him, but no importance whatever ought to be attached to such testimony as he has given after such an exposure of the means to which he resorted in the premises.

The suit must be dismissed at costs of plaintiff unless he should see proper to reorganize the bill *to* so as to foreclose the mortgage as one def't seemed willing to have done.

This may be done in ten days from this date.

29 July, 1890.

(S'g'd) ELMER S. DUNDY, *Judge.*

Upon the back of said memorandum of court appear endorsements in words and figures following, to wit: No. 257, M. U. S. circuit court, district of Nebraska. Alex. H. Robertson, trustee *vs.* Sam'l M. Chapman *et al.*. Memorandum of the court. Filed July 29, 1890. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, at the May term of said court, on the 29th day of July, 1890, the following proceedings were
396 had and done in said cause as appears of record on folio 727, journal "O," of said court, to wit:

ALEXANDER H. ROBERTSON, Trustee of the Estate of Ella V. Davis, Deceased, Plaintiff,
vs.
THE LOMBARD INVESTMENT COMPANY, Milton D. Polk, Samuel M. Chapman, Michael O'Donohoe, Frank Carruth, Samuel Waugh, Velasco V. Leonard, Kate Polk, Anna O'Donohoe, Uriah V. Mathews, H. A. Waterman & Son, and Milton J. Kennard, Defendants. } Decree. No. 257, M.

And now, on this 29th day of July, 1890, this cause came on to be heard by the court upon the amended bill filed in this cause, the several answers of all of the defendants filed herein, the replies filed thereto, and the testimony adduced in support of the issues in this cause on the part of the plaintiff herein and on the part of the several defendants herein and the same having been heretofore argued by the solicitor for the plaintiff, namely, Congdon & Hunt, and by the solicitor for the defendants, namely, George W. Covell, and was submitted to the court, and the court having considered the same and being well advised in the premises, doth find: That the allegations of fraud in the purchase of the property described in the pleadings in this cause by Milton D. Polk, set up in said bill and charged upon and against the defendant Samuel M. Chapman and the defendant Milton D. Polk have not been sustained by the testimony, and the court doth therefore find that the allegations of fraud made in the amended bill have not been established herein by the testimony introduced in this cause and considered by the court.

The court doth further find that the conveyance made by the plaintiff herein to the defendant O'Donohoe and the conveyance made by the defendant O'Donohoe and wife to Milton D.
397 Polk of the real estate described in the amended bill ought not to be set aside and held for naught; but, on the contrary, the court finds that the said conveyances were good and valid and that the deed from the plaintiff to O'Donohoe conveyed the title to the premises in controversy to the said defendant Michael O'Donohoe, and that the deed from Michael O'Donohoe and wife to Milton D. Polk conveyed t-e title of the premises in controversy to him, and that the several deeds from Milton D. Polk to the other defend-

ants are good and valid and convey the title of the several lots so conveyed to the defendants to whom they were so conveyed.

It is therefore considered, ordered, adjudged, and decreed by the court that the plaintiff's bill herein and his suit be, and the same are hereby, dismissed at the costs of the plaintiff, and that the defendants herein recover their costs of and from the said plaintiff, to be taxed, unless the plaintiff should see proper, within ten days from this date, to reorganize his bill so as to foreclose the mortgage, mentioned in the amended bill in this cause, given by Michael O'Donohoe to the plaintiff upon and against the property described in said bill that has not been released from the lien thereof.

The premises to be effected by this decree are described as follows: Twenty (20) feet off of the west side of lot twelve (12), in block twenty-nine (29), Plattsmouth; the east half of lot ten (10), in block twenty-eight (28), Plattsmouth; lots one (1) to six (6), inclusive, in block two (2), Plattsmouth; lots one (1) to six (6), inclusive, in block eighty-nine (89), Plattsmouth, all of said described property being situated in the city of Plattsmouth, in the county of Cass, in the State of Nebraska.

And also lots seven (7) to twelve (12), inclusive, in block five (5), in White's addition to the city of Plattsmouth, and also lots one (1) to six (6), inclusive, in block eight (8), in White's addition to
398 the city of Plattsmouth, all situated in Cass county, in the State of Nebraska.

To all of which findings of the court and to the decree and order of the court herein the plaintiff then and there excepted and prayed an appeal to the Supreme Court of the United States, which appeal is hereby allowed aad supersedeas bond fixed at $1,000.00.

To the allowance of which appeal the defendants, by their solicitor, except.

(S'g'd) ELMER S. DUNDY, *Judge.*

O K.
CONGDON & HUNT.

O K.
G. W. COVELL.

Thereupon, afterwards, to wit, on the 6th day of September, 1890, supersedeas bond was filed in said case; which said sepersedeas bond is in words and figures following, to wit:

399 In the Circuit Court of the United States for the District of Nebraska.

ALEXANDER H. ROBERTSON, Trustee of the Estate of Ella V. Davis, Deceased, Plaintiff,
vs.
SAMUEL M. CHAPMAN, MILTON D. POLK, MICHAEL O'DONOHOE, Lombard Investment Co., Frank Carruth, Samuel Waugh, Velasco V. Leonard, Wellington W. Drummond, Kate Polk, Anna O'Donohoe, Uriah V. Mathews, H. A. Waterman & Son, and Milton J. Kennard, Defendants.

Supersedeas Bond.

Know all men by these present that we, Alexander H. Robertson, trustee of the estate of Ella V. Davis, deceased, of Baltimore, Maryland, as principal, and John L. McCague, of Omaha, Nebraska, as surety, are held and firmly bound unto the above-named defendants, Samuel M. Chapman, Milton D. Polk, Michael O'Donohoe, Lombard Investment Co., Frank Carruth, Samuel Waugh, Velasco V. Leonard, Wellington W. Drummond, Kate Polk, Anna O'Donohoe, Uriah V. Mathews, H. A. Waterman & Son, and Milton J. Kennard, in the sum of one thousand ($1,000.00) dollars, to be paid to the said named parties; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 6th day of September, 1890.

Whereas lately, on the 29th day of July, A. D. 1890, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Alexander H. Robertson, trustee of the estate of Ella V. Davis, as complainant, and the above-named obligees, defendants, a decree was rendered against the said complainant, dismissing the said bill of complaint and for costs of said suit, and the said complainant having in open court prayed an appeal therefrom to the Supreme Court of the United States,
400 which was allowed and the amount of the appeal bond and supersedeas fixed at one thousand ($1,000.00) dollars:

Now, therefore, the condition of the above obligation is such that if the above-named Alexander H. Robertson, trustee as aforesaid, shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

ALEXANDER H. ROBERTSON, *Trustee*,
By CONGDON & HUNT, *His Att'y*. [SEAL.]
JOHN L. McCAGUE. [SEAL.]

Sealed and delivered in presence of—
E. C. BROWNLEE.

UNITED STATES OF AMERICA, } ss:
District of Nebraska, Douglas County, }

John L. McCague, being first duly sworn, says that he is worth, over and above all liabilities and homestead exemptions, the sum of $10,000.00 and upwards; and further affiant sayeth not.

JOHN L. McCAGUE.

Sworn to before me and subscribed in my presence this 6th day of September, A. D. 1890.

[SEAL.] E. C. BROWNLEE,
Notary Public.

The above obligation approved by me this 6th day of September, A. D. 1890.

SAM. F. MILLER,
Judge Sup. Court U. States.

Upon the back of said bond appear endorsements in words and figures following, to wit: No. 257, M. U. S. circuit court, district of Nebraska. Alexander H. Robertson, trustee, *vs.* Sam. M. Chapman *et al.* Supersedeas bond. Filed Sept. 6, 1890. Elmer D. Frank, clerk.

401 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, certify that the foregoing folios, from one to four hundred and one, contain true and faithful transcripts of the pleadings and proceedings in the case of Alexander H. Robertson, trustee, *vs.* Samuel M. Chapman *et al.*, of record and on file in my office as such clerk.

Witness my hand and the seal of said court, at Omaha, in said district, this 4th day of October, A. D. 1890.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Case No. 14,274. Nebraska C. C. U. S. No. 255. Alexander H. Robertson, trustee of the estate of Ella V. Davis, deceased, appellant, *vs.* Samuel M. Chapman, Milton D. Polk, *et al.* Filed October 14, 1890.

Office Supreme Court U. S.
FILED.
JAN 18 1894
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893. No. 255.

ALEXANDER H. ROBERTSON,

Trustee of the Estate of Ella V. Davis, deceased,

APPELLANT,

vs.

SAMUEL M. CHAPMAN, MILTON D. POLK, ET AL.

BRIEF FOR THE APPELLANT.

WILLIAM A. FISHER,
ALEXANDER H. ROBERTSON,
Solicitors for the Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893. No. 255.

ALEXANDER H. ROBERTSON,

Trustee of the Estate of Ella V. Davis, deceased,

APPELLANT,

vs.

SAMUEL M. CHAPMAN, MILTON D. POLK, ET AL.

BRIEF FOR THE APPELLANT.

The appeal is from a decree made by Judge Dundy in the Circuit Court of the United States for the District of Nebraska, by which he dismissed the bill filed by the appellant, the plaintiff below. The appellant is a testamentary trustee, and, in this capacity, was the owner of certain lots of ground in the city of Plattsmouth, in the State of Nebraska.

His bill, filed on the 26th day of January, 1889, averred that in order to sell these lots, he employed the appellees, Chapman and Polk, a law firm in Plattsmouth, as his agents and attorneys, to procure for him a decree in one of the local Courts to enable him to make a sale, and also to sell the property for him; that they represented to him that the value of the property was $4,000, and reported to him that they had found a purchaser at this price, one Michael O'Donohoe, and

the appellant was thus induced to convey the lots to O'Donohoe, receiving one thousand dollars in cash, and the notes of O'Donohoe, secured by mortgage, for the residue. The bill averred that all the representations made to him were false and fraudulent, that the sale was a sham, that Polk himself was the real purchaser, and that he and not O'Donohoe made the payment, and he, and not O'Donohoe, was to pay the notes given for the deferred payments, and the real value of the property was $9,000; that the property was conveyed over by O'Donohoe to Polk, as soon as the appellant's deed was delivered, and before it was recorded. Several conveyances, by way of mortgage and otherwise, had been made by Polk, and the alienees were made defendants. The prayer was that all the conveyances should be declared void, as in fraud of the rights of the appellant, and set aside, and the title quieted in the appellant, and that, if any of the conveyances made by O'Donohoe or Polk should be regarded as sufficient to convey title to the said alienees, the appellant might have "a personal judgment" against O'Donohoe, Polk and Chapman for the value of the property conveyed. There was also a prayer for general relief. (The bill is upon pages 1 to 6 of the printed record.)

Messrs. Chapman and Polk, though represented by the same counsel, filed separate answers, on the second day of March, 1889. These answers are on pages 7 to 19 of the printed Record. These defendants admitted that they had been employed by the appellant, as his attorneys, but claimed that the employment was limited to the service of procuring the probating of the will, under which the appellant took, and of obtaining from the District Court of Cass county, Nebraska, a decree or license to enable the appellant to make a private sale of the land, if they concluded that the decree was necessary. They denied the fraud imputed to them; and that there was any discrepancy between the price at which the property was sold, and its actual value, and they claimed that the pricehad been arranged by the appellant himself. Both Chapman and Polk asserted the bona fides of the sale, and conveyances. In view of the light thrown by the evidence upon the circumstances under which the conveyance

made by O'Donohoe to Polk, the attention of the Court is directed to the averments of the answers in this matter. Mr. Chapman, (pages 9 to 10 of the printed Record,) stated that O'Donohoe was unable to complete his purchase, and that "*in consequence thereof, and because of the sanction of the complainants thereto, the said Polk proposed to take said real estate upon the terms on which the sale had been made by the complainant to said O'Donohoe; and that thereupon, the complainant consenting thereto, said O'Donohoe did, on the 20th day of January, 1886, deed to said Polk all of said real estate, which deed was recorded in the office of the county clerk of Cass county, Nebraska, on the 22nd day of January, 1886, and that on the same day the deed from the complainant to O'Donohoe was filed for record, but that it was filed on that day and not sooner, because of the inability of said O'Donohoe to raise the money, with which to make the first cash payment of $1,000 for said real estate, and not for the purpose, or with the intent to defraud the complainant or the estate, of which he was trustee.*"

Mr. Polk, in his answer, (page 16 of the printed Record,) stated that O'Donohoe failed to raise the money for the cash payment, because of his failure to sell other property, and that thereupon, he "*so informed the complainant, and that he thereupon informed him that, in consequence of said disappointment of said O'Donohoe to sell his property, he could not fulfill the terms of said purchase, and that said Milton D. Polk proposed to complainant that, if he, complainant, was willing and so desired, he, the said Milton D. Polk, would pay the said sum of $4,000 for said property, and take it off the hands of said O'Donohoe, by taking a deed from said O'Donohoe to himself therefor, and fulfilling and complying with the terms of the said sale to O'Donohoe.*"

O'Donohoe, on the 27th day of February, 1889, filed in *propria persona*, a paper purporting to be an answer, which was merely an averment that he should not be made a co-defendant with any one but Polk. On the 17th of June following, under the circumstances to be hereafter referred to, he filed an answer adopting substantially the averments of the answers of Chapman and Polk.

The other defendants were alienees from Polk, and they filed answers setting up the bona fides of the several transfers made to them. Testimony was taken. The record has been carelessly made up, and the testimony has not been printed in its proper order. The evidence first taken by the appellant commences on page 164, and that of the defendants on page 39 of the printed record. The appellant and O'Donohoe were examined on behalf of the appellant, in support of the chief averments of the bill, and a number of witnesses in regard to the value of the property sold. The testimony of Mr. Robertson tended to show that, upon the only visit made by him to Plattsmouth, he employed the firm of Chapman and Polk, both as his attorneys and as his agents to effect sale of the property, and depended entirely upon their judgment as to its value; other witnesses were examined by him to show the value of the property, and that Polk was scheming to make a secret purchase of it, prior to November 14th, 1885, and their testimony will be hereafter referred to. O'Donohoe was examined with reference to the circumstances of the conveyance to him. Though he had conveyed to Mr. Robertson, the first information of the fraud, and had given the counsel of the appellant the facts upon which the bill was framed, he endeavored, as a witness, to support the case of the defendants. In the course of the argument, we will direct the attention of the Court to the grounds upon which it will be maintained that the evidence of O'Donohoe must be wholly rejected. There is room for grave suspicion that he was a suborned witness. His examination was of value in showing the nature of the man, and that he was a fit instrument for the fraud. Chapman and Polk were called upon their own behalf. Their testimony was directed to the proof that they were not employed to sell the property, and were the attorneys of Mr. Robertson for other purposes; that the price of the property was fixed by himself on the day of his visit to Plattsmouth, after interviews with a number of persons. Their letters to Mr. Robertson, hereafter to be referred to, we think, entirely discredit these statements. Neither of them was examined as to the transaction with O'Donohoe. The evidence of both, and particularly of Polk, will be hereafter referred to, in some detail. Other witnesses were examined by the defendants as to values.

The decree was accompanied by an opinon, filed the same day. The opinion and decree appear on pages 260 to 262 of the record.

The decree is alleged to be erroneous in its findings:

1. That the averments of fraud in the conduct of the defendants Chapman, Polk and O'Donohoe in the transactions mentioned in the pleadings, have not been established to be fraudulent.

2. That the conveyances from the plaintiff to O'Donohoe and from O'Donohoe to Polk were good and valid, and conveyed the title in the premises in controversy to Polk.

3. There was error in the dismissal of the bill and in not retaining the same, and in not decreeing that the conveyances from the appellant to O'Donohoe was fraudulently procured from him and void, and that this deed and that from O'Donohoe to Polk were ineffectual to divest the title from the appellant, except the titles taken by the other defendants, so far as necessary to their protection, and in not decreeing that the three defendants above named, or at least Chapman and Polk, should account to the plaintiff and pay to him the full present value of the portions of the property conveyed to innocent grantees, after an allowance for the moneys received by the plaintiff.

4. There was also error in refusing the appellant a decree against the three last-named defendants for the costs of the cause.

Brief of the Argument.

Judge Dundy appears to have lost sight entirely of the principles of equity which are applicable to negotiations or contracts between persons who occupy the relations which, according to the averments of the appellant, existed between him and the defendants, Chapman and Polk.

At all events, the brief opinion, which he filed, (Record, page 260,) induces the impression that he attached no importance to the nature of the relations asserted to exist, and entered upon no examination of the proofs offered in support of the averments that they existed. He treated the case as

one depending entirely upon the adequacy of the price paid for the property, and thought apparently the burden of proof to show inadequacy rested upon the appellant.

The important question to be determined was whether the relation of client and attorney, or of principal and agent, existed between the appellant and Chapman and Polk. If it did exist, the inquiry as to the adequacy of the price was not the primary one. In such case, it should be whether there had been a full disclosure by Chapman and Polk of all circumstances known to them, whether in making the purchase they, or either of them, had obtained any benefit to the disadvantage of the appellant, and whether they had in all respects dealt frankly and with the utmost good faith.

In such an examination, the comparison of value with price paid would be only one element to be taken into consideration with all the others.

The rules of equity upon this subject are so familiar that extended citations seem to be unnecessary.

In the case of Taylor vs. Taylor, 8 Howard's Rep., pages 199–200, Judge Daniel, in delivering the opinion of the Court, used the following language:

"The rules of law supposed to control the contracts of parties who do not stand upon a perfect equality, but who deal at a disadvantage on the one side, whether applicable to the relations of parent and child, trustee and *cestui que trust*, attorney and client, or principal and agent, have been laid down in various Courts, both of England and of our own country. To trace these rules to the several cases by which they have been propounded would be an undertaking rather of curiosity than of necessity or usefulness here, as the extent to which this Court has applied them, or is disposed to apply them in cases resembling the present, may be found within a familiar and direct line of inquiry. They are aptly exemplified by the late Justice Story, in his treatise on Equity Jurisprudence, Vol. I, sec. 307, where, speaking of frauds, which "arise from some peculiar confidence or fiduciary relation between the parties," he remarks: "In this class of cases

there is often found some inter-mixture of deceit, imposition, over-reaching, unconscionable advantage, or other mark of direct and positive fraud. But the principle on which Courts of Equity act in regard thereto, stands independent of any such ingredients, upon a motive of public policy; and it is designed in some degree as a protection to the parties against the effects of over-weening confidence and self-delusion, and the infirmities of hasty and precipitate judgment." * * *

"If confidence is reposed, it must be faithfully acted upon, and preserved from any inter-mixture of imposition. If influence is acquired, it must be kept free from the taint of selfish interests, and cunning, and over-reaching bargains. * * * Courts of Equity will not, therefore, arrest or set aside an act or contract, merely because a man of more honor would not have entered into it. There must be some relation between the parties which compels the one to make a full discovery to the other, or to abstain from all selfish projects. But when such a relation does exist, Courts of Equity, acting upon this superinduced ground, in aid of general morals, will not suffer one party, standing in a situation of which he can avail himself against the other, to derive advantage from that circumstance."

Judge Story, in the 218th sec., vol. 1, of the same treatise, in speaking of the relations between client and attorney, principal and agent, and other kindred relations, says: "In these and the like cases, the law, in order to prevent undue advantage from the unlimited confidence, affection or sense of duty which the relation naturally creates, requires the utmost degree of good faith (*uberrima fides*) in all transactions between the parties. If there is any misrepresentation, or any concealment of a material fact, or any just suspicion of artifice or undue influence, Courts of Equity will interpose, and pronounce the transaction void, and, *as far as possible*, restore the parties to their original rights." The subject is more fully treated in sections 310 to 313.

In section 311, the author refers particularly to the burthen of proof, and says that "the burthen of establishing perfect fairness, adequacy and equity is thrown upon the attorney,

upon the general rule that he who bargains in a matter of advantage with a person placing confidence in him is bound to show that a reasonable use has been made of that confidence; a rule applying equally to all persons standing in confidential relations with each other. If no such proof is established, Courts of Equity treat the case as one of constructive fraud."

See also the judgment of Vice Chancellor Wigram in the case of Edwards vs. Meyrick, 2 Hare, 68 to 70.

And "this doctrine is not necessarily limited to cases where the contract or other transaction respects the right or property in controversy, in the particular suit in respect to which the attorney, as solicitor, is advising or acting for his client; but it may extend to other contracts disconnected therefrom, or at least where, from the attendant circumstances, there is reason to presume that the attorney and solicitor possessed some marked influence, ascendancy or other advantage over his client in respect to them."

1 Story's Equity Jurisprudence, sec. 310.

L.R. 18 Eq. 333-4 Dunne vs. English; 56 N.Y. 285 Cann vs. Cann

The evidence in the cause establishes the existence of the relation of attorney and client between the appellant and Chapman and Polk. Mr. Chapman had occupied this relation to Judge Stewart, who had been the predecessor of Mr. Robertson in his trusts, and at the time that Mr. Robertson became trustee, his firm were acting as the solicitors for the foreclosure of a mortgage given by Shryock upon a part of the property in controversy, and this litigation was one of the subjects of consideration between Mr. Robertson and Messrs. Chapman and Polk upon the occasion of the single visit made by Mr. Robertson to Plattsmouth. The firm was then further employed by Mr. Robertson to probate the will of Mrs. Davis, and to procure a decree to sell the property, as well as to sell it.

These facts appear from the testimony of Mr. Chapman, at pages 119, 120 and 127; from that of Mr. Robertson, pages 216 to 219, 231 to 232, and the letters of Mr. Chapman, and of the firm of Chapman and Polk, on pages 247 to 250 of the

printed Record. The answers of Chapman and of Polk admit the existence of this relation. Chapman's answer, page 7; Polk's answer, page 13.

The circumstances were such as give to the attorneys a marked influence and advantage over their client. Mr. Robertson, upon assuming the trusts, found that Messrs. Chapman and Polk were the counsel of his estate at Plattsmouth. He had no acquaintances in Plattsmouth, and no knowledge whatever in regard to the values of property there.

Evidence of Mr. Robertson, pages 236, 241 and 242.

That Mr. Robertson relied confidently upon their advice, and trusted in their integrity, appears not only from his testimony, but very clearly from the correspondence.

In one of the letters from Chapman and Polk, dated the 12th day of December, 1885, they transmitted to Mr. Robertson the deed to O'Donohoe for execution by him, and while suggesting that it should be returned to them, they said that if he did not know them well enough to be satisfied to do so, he could transmit the deed to a bank, with his instructions. (Pages 248 and 249 of the Record.)

Mr. Robertson executed the deed and sent it to them, with his letter under the date of December 17th, 1885, in which he told them that he had ample confidence in them. (Record, page 80.)

Messrs. Chapman and Polk occupied not only the relation of attorneys to the appellant, but also that of his agents to effect a sale of the property in litigation.

They both denied by their answers that they had been employed to effect a sale of the property, though Polk admits that Mr. Robertson had come out to Plattsmouth and "conferred with" them upon the subject. They have reiterated the denial, upon their examination. Their denials would be entitled to no weight, against the positive testimony of Mr. Robertson as to their employment, in view of the circumstances, calculated to discredit their statement.

Fortunately it is unnecessary to balance the weight of the testimony of the parties upon this subject, since the correspondence establishes the truthfulness of the averments of the bill. Mr. Robertson was in Plattsmouth during the month of October, 1885, and after his return to Baltimore he received from Mr. Chapman the first letter of the correspondence.

It is dated October 22d, 1885, and is printed on pages 247 and 248 of the record.

It was written by Mr. Chapman, and informed Mr. Robertson that his firm had been canvassing the sale, and reported to him an offer which they had obtained.

The next letter, under the date of November 14th, 1885, from Chapman and Polk, gave the name of the alleged purchaser, and requested authority to complete the transaction. (Record, page 248.)

Mr. Robertson, acting upon the advice given him, accepted the proposition, executed a deed to O'Donohoe, received a payment of $1,000 in cash, and the notes of O'Donohoe for the deferred payments, the transaction being closed between himself and Chapman and Polk, having been concluded by their letters of January 22d and January 26th, 1886.

In the letter of January 26th, 1886, it was represented to Mr. Robertson that the cash payment had been received from O'Donohoe, while, in fact, it had been paid by Polk, who had before received the conveyance from O'Donohoe. According to Polk's testimony, he wrote on May 1st following the letter, copied on pages 79 and 80 of the Record, in which he told Mr. Robertson that he had "traded O'Donohoe out of the property," leaving him naturally under the impression that it was a recent transfer, and saying nothing which was calculated to induce a suspicion as to the good faith of the transfer to O'Donohoe.

As the case was presented to the Circuit Court, it appeared that Chapman and Polk had been both the attorneys and the sale agents of the appellant, and that Polk had acquired the title contemporaneously with the transfer to O'Donohoe, and had made the false statement mentioned.

If there were no other circumstances, these alone would have called for the application of the principles referred to, and required a clear explanation by the defendant of the circumstances under which Mr. Polk had obtained the title, and of the *bona fides* of the whole transaction. Judge Dundy disregarded this obligation of the defendants, and concluded that, although a number of witnesses produced by the appellant, testified that in November, 1885, the property was worth from $5,600 to more than $8,000, the defendants had satisfactorily disposed of the case by introducing an equal or larger number, who fixed the value from $3,500 to $4,500, and he was of opinion that, although the property was worth $8,000, Messrs. Chapman and Polk were in position to become purchasers, and procure whatever "margin," or "room for speculation" that they could obtain.

It is not necessary, however, that the appellant should take his stand merely upon the legal presumptions against the defendants, Chapman and Polk. We will endeavor to present briefly and fairly a statement of the salient facts of the case.

There is some uncertainty as to the exact date of the visit made by Mr. Robertson to Plattsmouth. Mr. Robertson stated that it occurred in October, while Mr. Polk testified that the visit was made in September, of the year 1885. When Mr. Robertson was there, the state of the foreclosure litigation already mentioned was discussed between him and Chapman and Polk. They advised an adjustment of the litigation by the release of a claim which Mr. Robertson's trust estate had against Shryock, upon the execution by Shryock, the owner of the equity of redemption, of a quit claim deed to Robertson, as trustee, for the lot which was the subject of the foreclosure suit. The counsel of Shryock was sent for, the arrangement was concluded so far that a stipulation, for the purpose of effectuating it, was executed by Robertson before his departure the same day from Plattsmouth. The stipulation is printed on page 77.

The evidence of Mr. Robertson on the subject appears on page 218; that of Mr. Polk, on page 48, and that of Mr. Chapman, on page 119 and page 134,

On the 22d day of October, 1885, and the 14th day of November, 1885, the letters already referred to, were written by Chapman, and by his firm to the appellant, proposing the sale to O'Donohoe. Mr. Robertson, by his letter of November 17, 1885, authorized them "to accept" O'Donohoe's offer. (Page 80.) By the letter dated December 12, 1885, Chapman and Polk announced that they had matured the contract with O'Donohoe, and transmitted the deed for execution, as well as O'Donohoe's notes and mortgage, and stated that the decree would be obtained probably by the time the deed should be returned.

In a letter dated December 17th, 1885, Mr. Robertson returned the deed and mortgage, and directed that the deed should not be delivered until after the decree had been procured. (Record, page 80.)

In a letter, dated December 22d, 1885, Mr. Polk, on behalf of his firm, acknowledged the receipt of the deed and mortgage, and stated that they would be recorded as soon as his firm should obtain the decree and *O'Donohoe pay in the money.* In a letter, dated January 22d, 1886, they transmitted $449.15 of the purchase money to Mr. Robertson; and by the letter of Polk, for his firm, dated January 26th, 1886, they transmitted an account purporting to exhibit *the receipt of $1,000 from* O'Donohoe, and its disbursement. (Record, pages 249 to 251.)

In the month of August, 1888, Mr. Robertson received a letter from O'Donohoe, apprising him that the transaction was not as it was represented by him by his attorneys. He consulted counsel in Nebraska, and, upon their advice, the bill was filed. (Record, pages 229 and 230.)

It has been shown upon the cross-examination of Polk, that soon after the departure of Mr. Robertson from Plattsmouth, he began to take an active part "in the purchase and sale of this real estate," (page 66); that, *on the 7th day of November, 1885*, he procured a quit claim deed to be made by Shryock to himself for the lot, which, under the stipulation mentioned, was to have been conveyed to Robertson, and he admitted

that at the date of that deed he had made up his mind to become the purchaser of the property embraced in the deed, and the explanation which he made of his conduct was that he would have turned it over to his client, if *he had* not purchased the property himself. (Record, pages 67 and 68, and 398th answer, page 73.) He concealed from Mr. Robertson the fact that such a deed had been executed. (Record, page 230, 400th answer.)

He had then, by his own admission, determined to purchase the east half of lot 10, in block 28, one of the most valuable lots, and had procured the deed for it some days prior to the writing of the letter, in which he reported the alleged sale to O'Donohoe.

Mr. Polk, without any authority being obtained from the Court to that end, was twice recalled in order to repair breaches in his armor. On one of these occasions, his recall was in order to enable him to testify that when he received the quit-claim deed from Shryock, he took it in *blank* as to the name of the grantee, and that he retained it in that condition, and afterwards filled in his own name, about the time it was recorded, that is, January 21st, 1886. (Record, pages 143 to 146.) The explanation fails to explain, and it does, if possible, strengthen the proof of the fraud upon the part of Polk.

The attempted explanation leaves untouched the admissions, wrested from Polk by the cross-examining counsel. He did not attempt to withdraw his statements, repeatedly made, that the quit-claim deed, dated November 7th, 1885, had been received by him as early as November 10th, 1885, and that he had then formed the design to obtain the property. The act of taking a deed, with the name of the grantee omitted, is in itself, a just ground for suspicion; but it is connected by the testimony in the cause with other acts of Polk, which furnish a ready explanation of the motives which induced him to take the deed without a grantee, if, in fact, he did so. The evidence shows that he was about this time in negotiation with both Walker and Parmelee, in the effort to induce one of them to enter into the purchase of the property at $4,000, and divide the profits with him. Upon his cross examination, he

was asked whether, at the time he took the quit-claim deed, he had not seen Walker and Parmelee on the subject. He denied that he had seen Parmelee, but did not deny that he had seen Walker. He was uncertain at that time whom he should use as the instrument of the fraud, and selected O'Donohoe afterwards, and hence he left the name of the grantee out of the deed, in order to accommodate it to his design in the future.

Although the quit-claim deed was in Polk's possession, as he admitted, it was not produced nor called for by the cou n sel on either side. (2118th and 2119th answers, page 145.)

Mr. Polk invited Mr. Perry Walker to unite with him in the purchase of the whole property, about six weeks prior to the time when Walker heard of the sale of the property, and stated to him that there would be a profit in it, above a sum of $4,800. (Record, pages 195 to 198. Evidence of Walker, and answers 177 and 178.)

Upon his cross-examination, Polk admitted that he had endeavored to make this arrangement with Walker. (Record, pages 56, 57, 69.)

He made a proposition to Mr. Parmelee of Plattsmouth, before the purchase of the property, that he should advise the sale of the property by Mr. Robertson, for the sum of $4,000, to Parmelee, if he would make a division of the profits of the transaction with him. Record, pages 179 and 180. Mr. Polk has denied the truth of his statement, but there is no other impeachment of it.

When the deed and mortgage were returned to Chapman and Polk, they were retained from being recorded until January 22, 1886, and in the meantime Polk had procured from O'Donohoe and his wife, a deed to himself, the consideration stated in the instrument, being the sum of $4,800.

He had also about a week prior to that time sold to Mr. Leonard for $1600, the Shryock lot for which he obtained the quit claim deed. (Testimony of Leonard, pages 199 and 200.)

He caused the mortgage and the three deeds mentioned to be recorded on the same day.

The conveyance made by Mr. Robertson to O'Donohoe included the lot which was the subject of the foreclosure, Mr. Robertson being then under the impression that the quit claim deed had been made to him under the terms of the stipulation with Shryock. (400th answer of Mr. Robertson, page 230.) It was intended that the mortgage from O'Donohoe should also include the Shryock lot. (Testimony of Robertson, pages 231 to 232, and the cross-examination of Polk, pages 71 and 72, questions 369 to 384.)

The Shryock lot was omitted from the mortgage. Mr. Robertson was unaware of this fact. (404th answer, page 232; 386th answer, page 228.) Polk says that it was a mistake but admitted that he discovered the fact before the transaction was consummated. (Page 71.) Polk obtained from Leonard the whole purchase money of this lot, by thus omitting it.

O'Donohoe paid Polk no money, and he (Polk) was obliged to admit that, in accounting to Mr. Robertson, he had rendered him a false statement. (Record, pages 70 and 71, 357th to 367th answers.)

Shortly after the bill in this case had been filed, O'Donohoe met, at their offices in Omaha, three of the counsel for the appellant, Messrs. Clark, Congdon and Clarkson. Upon this occasion he gave them an explanation of the transaction between him and Polk. It will be found on pages 188 and 189, of the testimony of Mr. Clark, and on page 215, in that of Mr. Congdon. At the conclusion of his statement to Mr. Clarkson, he demanded the sum of $1,000 for giving his testimony, and it was refused him. (7th answer, page 189.) His statement corresponded with the averments in the bill.

He was called and examined by the counsel for the appellant on the 17th day of June, 1889, as their first witness. Meanwhile, he had experienced a change. He had been angry with Polk, because he had been used as a tool in the scheme, and Polk had not paid him the wages which had been agreed upon. *After Polk had ascertained that the appellant would make use of O'Donohoe as a witness, and before O'Donohoe's examina-*

tion, Polk purchased his peace with him by giving him his note for $500. The details of this transaction were brought out upon the cross-examination of Polk. (Record, pages 76 and 77.)

As before stated, O'Donohoe, on the 27th of February, 1889, filed the paper called an answer, in which he did not assist the defendants. But after he had made his adjustment with Polk, and received the note, on the 17th day of June, 1889, the day on which his examination as a witness took place, he filed another answer in which he adopted substantially the averments contained in the answers of Chapman and of Polk. (Record, pages 34 to 37.) His deposition appears in the Record, pages 164 to 173.

Mr. Polk did not venture to endeavor to support the theory of his answer with respect to the transaction by his own testimony.

The reliance seems to have been upon the evidence of O'Donohoe. The theory of the defence is that O'Donohoe was originally a real purchaser and intended to carry out the terms of the contract; that he became unable to do so, and that Polk took his place. It is apparent that this theory is entirely inconsistent with the conduct of Mr. Polk, as shown by the proofs, to which attention has already been directed. But if the theory were sustained by the proofs, nevertheless there would be a gross fraud upon the rights of the appellant.

According to this theory, Messrs. Polk and Chapman having ascertained that the purchaser could not comply with his contract, Mr. Polk considered the property worth so much more than $4,000 that he thought he could pay an advance of $800 to O'Donohoe, and still expect to realize a profit upon his bargain. He concealed the facts from his client, instead of giving to him the benefit of the cancellation of the contract of sale. There is one proposition stated by Judge Dundy, which cannot be controverted, that is to say, that no importance can be attached to the testimony of O'Donohoe. In view of the attempted sale of his evidence to appellant (O'Donohoe's Ev., pages 168-9; Clark, page 189), and of his sale of it to Polk (Polk, pages 76-7; O'Donohoe, page 170), and the trick thus

perpetrated upon the counsel of the appellant, the testimony must be eliminated from the case. If this be done, Polk not having attempted an explanation in his testimony, the transaction must fall of its own weight, upon the principles of law. There is another fact of minor importance, but which should not be unnoticed, as it reflects some light upon the motives of the principal defendants. It has been already shown that Mr. Robertson had stipulated that his deed should not be delivered until a decree had been procured in the local Court authorizing the sale. The petition or bill for this relief had not been filed at the time that the deeds were recorded, although Mr. Robertson was under the impression that it had been. The deeds having been recorded on the 22d of January, 1886, on the 4th day of February Messrs. Chapman and Polk filed a petition for the relief and dismissed it in the month of April following. (Evidence of the Clerk, Mr. Showalter, page 194.)

Testimony as to the value of the property can be important, in a case which involves the doctrine of confidential relations, only when there has been some contract or transaction between these parties, and when it is necessary to ascertain whether there has been any overreaching.

But it is unimportant, and scarcely admissible, when there has been no contract between the parties, and the party occupying the superior position has imposed upon the other a sham purchaser, and a simulated contract. The transaction is void for this reason, entirely independent of any considerations arising out of the probability of loss to the defrauded party. In this case, about an equal number of witnesses were examined on either side. Judge Dundy has correctly stated the fact that their views of value differ between the sums of $8,000 and $3,500.

The burthen of proof then has not been met by the guilty defendants, even if the witnesses were entitled to equal credit.

The utmost that Judge Dundy was able to say in support of the view which he took of the evidence was, that the witnesses on either side had the *same* facilities for reliable information,

and that the testimony of one set of witnesses was "*quite as reliable*" as that of the other set, a confession that the burthen has not been relieved.

But even this weak support does not rest upon any reasonable or just view of the nature of the evidence. Messrs. Chapman and Polk were citizens of Plattsmouth, while Mr. Robertson was a stranger there. Both Chapman and Polk were probably influential there; Chapman had become Judge of the State District Court, and Polk was a member of the State Senate. Many of the witnesses examined by the defendants were persons employed by them, or having connections with them in some manner.

Matthews was their clerk; Stiles was a local politician, indebted to Polk for some petty appointment in connection with the legislature; Waterman was a defendant; Pickens was a carpenter whom Polk employed. The witnesses produced by the defendant not only were free from any motives of bias toward the appellant, but were evidently persons possessing much better means of knowledge from their own dealings in real estate than those of the defendants, and of higher position.

Mr. Chapman has denied that he had knowledge of the doings of his partner Polk. Such may be the fact; the appellant naturally had no means by which he could ascertain the sincerity of this statement. But Mr. Chapman cannot escape his share of responsibility. It was he who was the original and more responsible counsel, and he introduced Mr. Polk to Mr. Robertson as his co-partner. He commenced the correspondence in relation to the sale, but he afterwards allowed the correspondence, and the whole matter to be conducted by Polk. He is liable for the fraud of Polk in this connection.

Story on Partnership, sec. 108.

It is submitted that the appellant is entitled to the reversal of the decree, and that, so far as the property has not been disposed of to innocent purchasers, the titles should be restored, and that Polk and Chapman should be required to

account for the full present value of the land sold, to innocent purchasers after the application of the moneys received by Mr. Robertson.

As to the nature of the decree, we refer to the case of Kimber vs. Barber, Law. Rep. 8 Ch. App. 56.

WILLIAM A. FISHER,
ALEXANDER H. ROBERTSON,
Solicitors for the Appellant.

Office Supreme Court U. S.
FILED.
MAR 5 1894
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 255.

ALEXANDER H. ROBERTSON, TRUSTEE OF THE ESTATE OF ELLA V. DAVIS, DECEASED, APPELLANT,

vs.

SAMUEL M. CHAPMAN, MILTON D. POLK, *et al.*

BRIEF FOR APPELLEES.

GEORGE E. HAMILTON,
For Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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BRIEF FOR APPELLEES.

I.

STATEMENT.

In this suit the bill was filed by the complainant, Alexander H. Robertson, of Baltimore, Maryland, as substituted trustee under the will of Ella V. Davis, of the same place, to declare null and void and in fraud of his rights certain conveyances of and encumbrances on several lots and parcels of ground located in Plattsmouth, Nebraska, and in said bill described, and to cancel and set aside said deeds and to quiet the title thereto in the complainant.

The alternative relief of a moneyed decree, against three

of the defendants, viz., O'Donohoe, Chapman, and Polk, is asked for in certain contingencies.

It is alleged in the bill that the complainant, having under the will of said Ella V. Davis authority to sell and convey such of the property of the testatrix as yielded no income in case the same could not be leased to advantage, did make a deed of conveyance to the property belonging to the Davis estate, situated in Plattsmouth, to the defendant Michael O'Donohoe, a citizen of Plattsmouth, for the sum of $4,000. This conveyance was dated December 17, 1885, and recorded January 22, 1886. That by deed dated January 20, 1886, and recorded January 22 of the same year, the defendant O'Donohoe, for the sum of $4,800, conveyed the property in question to the defendant Polk, and that subsequently the defendant Polk conveyed and mortgaged several parts and parcels of said property to the defendants Carruth, Drummond, Waugh, Leonard, Matthews, Waterman and Sons, and Kennard in the manner and to the extent set forth in the bill of complaint.

The bill alleges that the complainant made this conveyance under the advice of Chapman and Polk, who were in partnership in the practice of law in the city of Plattsmouth, relying particularly upon the advice of Chapman, who had been for some time attorney for the Davis estate in Plattsmouth; that it was represented to him by the defendants Chapman and Polk that $4,000 was a good price for the property, and that a higher price could not be obtained; that the sale to O'Donohoe was made through the firm of Chapman and Polk, who agreed with the plaintiff to obtain from the court at Plattsmouth a license to sell. Defendants further allege that these representations were false and fraudulently made; that the defendants Chapman and Polk failed to obtain the consent of the court to the conveyance to O'Donohoe; that the sale to O'Donohoe was a pretense, the real purchaser being the defendant Polk; that the value of the property at the time of said sale to O'Donohoe was $9,000

or upwards, and that the conveyances and mortgages subsequently made by Polk to the several defendants, heretofore described as the grantees and mortgagees, were made in fraud of the rights of the complainant and with the knowledge on the part of the grantees and mortgagees of said fraud, and that by reason of the matters alleged as aforesaid the said conveyances and encumbrances should be set aside; but if the court should find that the conveyances and encumbrances made by said Polk and O'Donohoe be valid as between the complainant and such grantees the personal judgment against said O'Donohoe, Polk, and Chapman for the full value of the property should be given in favor of the complainant.

To this bill the several defendants filed their separate answers, and the answers of Chapman and Polk and O'Donohoe deny specifically the allegations of the bill. Chapman and Polk admit that they were employed by the appellant as his attorneys in Plattsmouth to probate the will and do particular services in regard thereto. They deny that they were employed to obtain from the court a license to sell at private sale, but say that they were only to obtain such license in the event that after an examination of the questions presented they should deem it necessary and expedient to obtain the same. They deny that they were employed to make sale of the property or that they had anything to do with the fixing of the price upon said property, but state that the appellant Robertson, trustee as aforesaid, came to Plattsmouth, viewed the property, and after interviewing real-estate agents, bankers, and business men of Plattsmouth agreed that $4,000 was a fair price for the property and the price that he would expect; that he urged the defendant Chapman to take the property at that price, and not being able to make a sale to Chapman he requested the said Chapman to report to him, the said appellant, any offer of purchase that he might receive at the price mentioned. They allege that the sale to O'Donohoe

was made in good faith, and that O'Donohoe was prevented from complying with the terms thereof only because of his inability to sell other property, of which he was the owner, and from which he intended to derive the purchase-money to be paid for the property of the appellant. They allege that, while they filed a petition for a license to sell, they found upon an examination of the law that it was unnecessary to press that petition, as a good title could be given by the trustees under the will without the intervention of the Nebraska court.

Defendants and other witnesses were examined, and upon the pleadings and the evidence in the case the circuit court made a decree, which will be found upon page 261 of the Record, dismissing the suit at the cost of the complainants. Accompanying that decree was an opinion delivered by Judge Bundy, of said circuit court, which will be found on page 260 of the Record.

Dismissal of the suit as aforesaid is assigned as error on the following grounds:

1. That the averments of fraud in the conduct of the defendants Chapman, Polk, and O'Donohoe in the transactions mentioned in the pleadings have not been established to be fraudulent.

2. That the conveyances from the plaintiff to O'Donohoe and from O'Donohoe to Polk were good and valid and conveyed the title in the premises in controversy to Polk.

3. There was error in the dismissal of the bill and in not retaining the same and in not decreeing that the conveyances from the appellant to O'Donohoe were fraudulently procured from him and void, and that this deed and that from O'Donohoe to Polk were ineffectual to divest the title from the appellant, except the titles taken by the other defendants, so far as necessary to their protection, and in not

decreeing that the three defendants above named, or at least Chapman and Polk, should account to the plaintiff and pay to him the full present value of the portions of the property conveyed to innocent grantees, after an allowance for the moneys received by the plaintiff.

4. There was also error in refusing the appellant a decree against the three last-named defendants for the costs of the cause.

II.

BRIEF OF ARGUMENT.

With regard to the defendants who are named as the alienees from Polk, they and each of them in their several answers assert the *bona fides* of the transfers made to them respectively, and there is nothing whatever in the testimony tending to contradict or discredit the position of these defendants as set up in their answers, and so far as they are concerned not a shadow of a case is made out.

Chapman and Polk are the defendants against whom the appellant, both in his bill of complaint and in his brief, has directed principally his attack and charges, and the contention most relied on seems to be that there existed between the appellant on the one hand and the said Chapman and Polk on the other the relation of client and attorney or of principal and agent, and that by reason of this relation the purchase by Polk of the property described in these proceedings, under the circumstances of the case as shown by the record, was a violation of the rules of equity regulating the conduct of those standing in the relation of client and attorney or principal and agent, and it is sought to sustain this contention by the citation of authorities.

From the bill of complaint it appears that the appellant Robertson is the trustee under the will of one Ella V. Davis,

substituted in the place of William A. Stewart, and that by the terms of said will power is given to the trustee to sell and dispose of such real property belonging to said estate as yielded no income or in case the same could not be leased to advantage.

The property in controversy, it appears, is situated in Plattsmouth, Nebraska; that Samuel M. Chapman, of the firm of Chapman and Polk, had been employed by the appellant's predecessor, William A. Stewart, as his attorney at Plattsmouth to look after some litigation growing out of and affecting this property.

From the testimony of the appellant Robertson (Record, pp. 216, '17, '18) it appears that shortly after his appointment as trustee he proceeded to Plattsmouth and by a personal examination of the property determined that it could not be leased to advantage, and that the interests of the estate would be best served by its sale.

While in his direct examination Mr. Robertson labors to convey the impression that the value of this property was fixed by Chapman and Polk, particularly by the advice of Chapman, he is forced to admit in his cross-examination (Record, pp. 238, '39, '40) that he was introduced by Mr. Chapman to six or more real-estate agents and bankers at Plattsmouth and with them discussed the value of the property and its condition.

On Record, page 243, beginning with interrogatory No. 450, Mr. Robinson states that he had fully determined to sell the property when he was in Plattsmouth; that the only question was to find a purchaser for $4,000, and in this connection the answers of Robertson to interrogatories 422 '23 (Record, p. 236) may be referred to.

Chapman in his deposition (Record, p. 120) states that Mr. Robertson came to Plattsmouth, and that he, Chapman, because of the condition of the property advised its sale; that Robertson wanted to know of him what the property was worth; that he, Chapman, told him that he was not a

good judge of it, but that he took Robertson to look at the property, and took him also to see the real-estate agents in Plattsmouth and the men dealing in real property, by whom Robertson could be advised as to its value. Chapman then (Record, pp. 121 '22 '23) names the parties to whom he introduced Robertson, and gives substantially what passed between them. It is apparent, therefore, that Mr. Robertson was not advised by Chapman and Polk or either of them as to the value of this property; that he did not act upon their advice or through them as his agents in this matter, but that by personal inspection of the property, fortified by the advice of some of the leading business men in Plattsmouth, he made up his own mind both as to the desirability of a sale and then as to the price to be placed upon the property when sold.

III.

It is charged in the bill of complaint that in the sale to O'Donohoe the said O'Donohoe was the nominal purchaser only, the real purchaser being Polk himself, and in appellant's brief it is sought to sustain this charge by reference to testimony tending to show that immediately after the visit of Robertson to Plattsmouth the defendant Polk was actively engaged in the endeavor to find a purchaser for the property, and had requested Parmalee and Walker to purchase the property at $4,000 and to share the profits on any sale thereof with Polk; that Polk, although he had received no money from O'Donohoe, led Robertson to believe from an account sent to him that he had received the cash payment of $1,000, and that, further, the quitclaim deed from Shryock, dated November 7, 1885, was made to Polk and not to O'Donohoe or to Robertson as trustee.

So far as the testimony of Parmalee is concerned, little or no credit or reliance can be placed thereon. It appears that he was a personal enemy of Mr. Polk, and this fact, though

stated by Polk, is not denied by Parmalee, although he was recalled after the taking of Polk's testimony. Parmalee's conversation is absolutely denied by Polk. In his direct examination Mr. Parmalee testifies that Polk came to him first and asked him what he (Parmalee) would give for the property. Parmalee answered, "I thought a moment and said, I will give $3,500, but I said that I do not know that I want to make an investment." Polk then asked him if he would give $4,000 for it and divide the profits (Record, p. 180). He says that he thinks this conversation was in the presence of Mr. Root, when, according to the positive testimony of both Chapman and Robertson, Mr. Root was not known to them for several years afterwards. On Record page 181 Mr. Parmalee says that he did not know Mr. Robertson. "I never saw him and I do not know anything about him," but under cross-examination, on the same page of the record, he admits that he did see Robertson and in conversation with Robertson told him that he (Parmalee) would give $3,500 or $4,000 for the property. He thinks that Mr. Polk introduced him to Mr. Robertson, when both Robertson and Chapman testify that Chapman and not Polk brought Robertson and Parmalee together. When recalled (Record, p. 152) Parmalee endeavors to make it appear that the valuation put by him upon the property was done so at the request of Chapman and Polk, but this is hardly consistent with his direct examination, wherein he states that when asked to put a price upon the property "he thought a moment and then answered."

As Mr. Walker fixes the date of his conversation with Polk at about six weeks after Polk acquired the property, the fact that Polk proposed to sell it to him at a higher price is of no moment in this case.

The quitclaim for the Shryock lot was taken by Polk after O'Donohoe had agreed to purchase the property and after Polk, knowing that O'Donohoe would not be able to comply with the terms, was himself thinking about taking it off of

O'Donohoe's hands, or whether he took the release in his own name or in the name of O'Donohoe or in the name of Robertson has but little bearing upon the case at bar and throws no light upon the transaction. The most convenient way for him to take it was to take it in his own name, so that if he took the property there would be no necessity for further conveyance. If O'Donohoe completed his purchase it was easier for Polk to convey to O'Donohoe than to have a conveyance from Robertson to O'Donohoe, and this fact seems, therefore, to be entirely immaterial.

From the testimony of Chapman and of Polk, and this testimony is in nowise contradicted or discredited, it must appear that O'Donohoe agreed to purchase this property at the price that had been fixed thereon by Robertson himself; that this was communicated to Robertson and a sale was agreed upon; that when the time came for the consummation of the sale O'Donohoe, having been disappointed in his expectations of raising money, found that he could not fulfill his contract; that thereupon an agreement was entered into between Polk and O'Donohoe by which Polk took the property off of O'Donohoe's hands at a small advance, and this, in view of the fact that Robertson had obtained the full price placed upon the property by him and would still obtain that price, was a legitimate transaction, which did not in anywise work to the injury of Robertson or the estate represented by him. It does appear that for a month or so Polk left Robertson under the belief that O'Donohoe was yet the purchaser, but later on and months before this suit was brought Polk acquainted Mr. Robertson that he was the purchaser of this property from O'Donohoe, and Robertson dealt with Polk as such purchaser. Not only was this knowledge conveyed to Robertson, but Polk requested Mr. Robertson to come to Plattsmouth in regard to the final settlement of the transaction and other matters.

The testimony of O'Donohoe, who is called as a witness for the complainant, is an absolute denial of all the com-

plainant contends for. Whether this testimony is entitled to belief is possibly a question, but it is instructive in this—that it shows in the proper light the origin and originator of this suit, for it is conceded that this suit was caused by a letter received by Robertson from O'Donohoe, which letter, however, while offered in evidence, does not appear to be in the record.

The charge made in the bill and testified to by Mr. Robertson that he was deceived by Chapman in the matter of the application to the court at Plattsmouth for a license to sell the property, and his statements as to the services rendered by Chapman and Polk, the nature of their employment, etc., are so completely met and disposed of by the deposition of the defendant Chapman that it is unnecessary to do more than refer the court to the Chapman deposition.

The testimony of the appellant Robertson as to occurrences between himself and the firm of Chapman & Polk, outside of the letters offered, is in all material particulars met and overcome by the testimony of Chapman and Polk, and in addition to this fact it seems to me that the appellant by his testimony has shown that he is both too emotional and forgetful to command absolute confidence. Though visiting Plattsmouth on a matter of business, and though dealing with entire strangers, he attaches a good deal of importance, being a Southern man himself, to the fact that Mr. Chapman was distantly related to the Lees, of Virginia (Record, p. 237) (which relationship, however, is absolutely denied by Mr. Chapman, Record, p. 128), and the further fact that Mr. Chapman spoke of R. B. Windham as a shrewd Yankee did not impress him, a Southern man, "with anything favorable of the gentleman." (Record, p. 238.)

Although he signed on September 5 an agreement in Plattsmouth and signed it before the clerk of the court, he has no recollection of being there on that date, but thinks, on the contrary, that he was there a month later, and he

could not find the letter in which Mr. Polk stated that he had become the owner of the property, and he only produced in evidence such letters as could be found of the many received and which were thrown about his office. (Record, p. 229.)

Another contention of the appellant is that the price, to wit, of $4,000, at which the property was sold, was entirely inadequate.

Upon this point I think it only necessary to refer to the opinion of Judge Bundy, in which he says:

"To establish the claim of fraud the plaintiff relies much on the inadequacy of consideration. The plaintiff's interest in lots sold for $4,000.

"A number of witnesses living at the place, who claimed to know the value of lots there at the time of the sale, fixed the value at from $5,600 to over $8,000. An equal or larger number, having the same facilities for reliable information, fixed the value from $3,500 to $4,500. The testimony of one set of these witnesses seems to me to be quite as reliable as that of the other set.

"So far, then, as this testimony is concerned I can see no force in it in the way of establishing the claim of fraud.

"Even if the property was worth $8,000, as the plaintiff claims, it would not establish the charge of fraud, because the plaintiff was on the ground, looked the property over, and consulted several real-estate agents with reference to the value, etc., and there is no testimony that satisfactorily shows that either Chapman or Polk did any improper thing in fixing on the value of the lots. I apprehend that no real-estate purchasers propose to pay full value for lots at the time of purchase, either in Plattsmouth or any other place. If there is no margin—no room for speculation—in a purchase, purchasers will not be numerous, however desirable the property may be. These lots have rapidly increased in value, and that fact, in connection with a mischievous letter of one O'Donohoe, accounts in a great measure, as I think, for the bringing of this suit. Outside of O'Donohoe's operations there is nothing on which the plaintiff can rely to support his case. O'Donohoe has stultified himself so completely that no reliance ought to be placed on anything he has done or said in connection with the matter."

This opinion was rendered by a judge familiar, perhaps, with the property and certainly acquainted with the parties defendant against whom such grave charges have been so rashly made, and he knew that the defendant Chapman occupies the honorable position of judge of the district court, and that the defendant Polk, though a young man, represents his fellow-citizens in the State senate of Nebraska, and from his knowledge of the case as presented to him from the evidence he gave the decree from which the appeal in this case is taken and delivered the opinion above referred to. He evidently concluded, as I think this Court must conclude, that the rules of equity invoked by counsel for appellant in their brief, while correct in principle, have no application whatever to the case at bar.

It is respectfully submitted that the decree of the court below should be affirmed.

GEORGE E. HAMILTON,
For Appellees.